

2-27-2008

## State v. Herrera Clerk's Record 2 Dckt. 34193

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Vol. 1 of 1

LAW CLERK

IN THE  
**SUPREME COURT**  
OF THE  
STATE OF IDAHO

State of Idaho,

PLAINTIFF/RESPONDENT

Vs.

Valentina Herrera,

DEFENDANT/APPELLANT

Appealed from the District Court of the Fifth  
Judicial District for the State of Idaho,  
in and for Cassia County  
Honorable John M. Melanson, District Judge

Lawrence Wasden

Attorney for Plaintiff/Respondent

Molly Huskey

Attorney for Defendant/Appellant

Filed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

By \_\_\_\_\_



\_\_\_\_\_  
Clerk

\_\_\_\_\_  
Deputy

34818

**IN THE SUPREME COURT  
OF THE STATE OF IDAHO**

State of Idaho,	)	
	)	
Plaintiff/Respondent,	)	District Court No. CR-2006-3507*D
	)	
Vs.	)	
	)	
Valentino Herrera,	)	Supreme Court No. 34818
	)	
Defendant/Appellant,	)	
	)	
	)	

\*\*\*\*\*

**CLERK'S RECORD ON APPEAL**

\*\*\*\*\*

**APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA**

\*\*\*\*\*

**THE HONORABLE JOHN M. MELANSON  
DISTRICT JUDGE**

\*\*\*\*\*

Lawrence Wasden  
Attention: Appellate Unit  
700 West Jefferson Street  
Boise Idaho 83720-0010

Molly Huskey  
State Appellate Public Defender  
3647 Lake Harbor Lane  
Boise Idaho 83703

## **TABLE OF CONTENTS**

**State of Idaho vs. Valentino Herrera  
District Court Case No. CR-2006-3507\*D  
Supreme Court Case No. 34818**

<b>DOCUMENT NAME</b>	<b>DATE FILED</b>	<b>PAGE NO.</b>
<b>Table of Contents</b>		<b>02</b>
<b>Index</b>		<b>05</b>
<b>ROA</b>		<b>08</b>
<b>Motion for Restitution</b>	<b>04/18/2007</b>	<b>16</b>
<b>Judgment of Conviction, Order of Commitment</b>	<b>04/25/2007</b>	<b>18</b>
<b>Notice of Appeal</b>	<b>04/27/2007</b>	<b>23</b>
<b>Motion for Appointment of State Appellate Public Defender</b>	<b>04/27/2007</b>	<b>26</b>
<b>Motion for Correction of Illegal Sentence and Modify Current Sentence Under Rule 35 Correct Illegal Sentence</b>	<b>05/01/2007</b>	<b>28</b>
<b>Motion for Appointment of New Counsel – Affidavit in Support of Motion for Appointment of New Counsel</b>	<b>05/01/2007</b>	<b>32</b>
<b>Motion for Review Sentence Pursuant to Idaho Criminal Rule 35</b>	<b>05/01/2007</b>	<b>54</b>
<b>Motion for Attorney's Fees</b>	<b>05/03/2007</b>	<b>56</b>

## **TABLE OF CONTENTS**

**State of Idaho vs. Valentino Herrera  
District Court Case No. CR-2006-3507\*D  
Supreme Court Case No. 34818**

<b>DOCUMENT NAME</b>	<b>DATE FILED</b>	<b>PAGE NO.</b>
<b>Order for Attorney's Fees</b>	<b>05/03/2007</b>	<b>59</b>
<b>Order Appointing a State Appellate Public Defender</b>	<b>05/03/2007</b>	<b>61</b>
<b>Court Minutes</b>	<b>05/30/2007</b>	<b>63</b>
<b>Order Appointing Counsel</b>	<b>05/30/2007</b>	<b>65</b>
<b>Motion for Attorney's Fees</b>	<b>06/08/2007</b>	<b>67</b>
<b>Order for Attorney's Fees</b>	<b>06/13/2007</b>	<b>70</b>
<b>Amended/Supplemental Motion for Correction or Reduction of Sentence, ICR 35 and Memorandum in Support</b>	<b>06/13/2007</b>	<b>71</b>
<b>Amended Notice of Appeal</b>	<b>06/14/2007</b>	<b>97</b>
<b>Motion for Payment of Attorney's Fees</b>	<b>06/22/2007</b>	<b>102</b>
<b>Order Approving Payment of Attorney</b>	<b>06/26/2007</b>	<b>105</b>
<b>Motion to Continue</b>	<b>07/06/2007</b>	<b>107</b>
<b>Order of Continuance</b>	<b>07/10/2007</b>	<b>109</b>
<b>Court Minutes</b>	<b>07/26/2007</b>	<b>111</b>
<b>Motion for Payment of Attorney's Fees</b>	<b>08/22/2007</b>	<b>113</b>
<b>Order Approving Payment of Attorney</b>	<b>08/23/2007</b>	<b>116</b>

## **TABLE OF CONTENTS**

**State of Idaho vs. Valentino Herrera  
District Court Case No. CR-2006-3507\*D  
Supreme Court Case No. 34818**

<b>DOCUMENT NAME</b>	<b>DATE FILED</b>	<b>PAGE NO.</b>
<b>Court Minutes</b>	<b>08/31/2007</b>	<b>118</b>
<b>Motion to Continue</b>	<b>10/11/2007</b>	<b>120</b>
<b>Order of Continuance</b>	<b>10/15/2007</b>	<b>122</b>
<b>Court Minutes</b>	<b>11/01/2007</b>	<b>124</b>
<b>Order of Restitution</b>	<b>11/01/2007</b>	<b>133</b>
<b>Order of Restitution</b>	<b>11/01/2007</b>	<b>135</b>
<b>Notice of Appeal</b>	<b>11/30/2007</b>	<b>137</b>
<b>Motion for Appointment of State Appellate Public Defender</b>	<b>12/13/2007</b>	<b>145</b>
<b>Order for Appointment of State Appellate Public Defender</b>	<b>12/14/2007</b>	<b>147</b>

## INDEX

**State of Idaho vs. Valentino Herrera  
District Court Case No. CR-2006-3507\*D  
Supreme Court Case No. 34818**

<b>DOCUMENT NAME</b>	<b>DATE FILED</b>	<b>PAGE NO.</b>
<b>Amended Notice of Appeal</b>	<b>06/14/2007</b>	<b>97</b>
<b>Amended/Supplemental Motion for Correction or Reduction of Sentence, ICR 35 and Memorandum in Support</b>	<b>06/13/2007</b>	<b>71</b>
<b>Court Minutes</b>	<b>05/30/2007</b>	<b>63</b>
<b>Court Minutes</b>	<b>07/26/2007</b>	<b>111</b>
<b>Court Minutes</b>	<b>08/31/2007</b>	<b>118</b>
<b>Court Minutes</b>	<b>11/01/2007</b>	<b>124</b>
<b>Index</b>		<b>05</b>
<b>Judgment of Conviction, Order of Commitment</b>	<b>04/25/2007</b>	<b>18</b>
<b>Motion for Appointment of New Counsel – Affidavit in Support of Motion for Appointment of New Counsel</b>	<b>05/01/2007</b>	<b>32</b>
<b>Motion for Appointment of State Appellate Public Defender</b>	<b>04/27/2007</b>	<b>26</b>
<b>Motion for Appointment of State Appellate Public Defender</b>	<b>12/13/2007</b>	<b>145</b>

## INDEX

**State of Idaho vs. Valentino Herrera  
District Court Case No. CR-2006-3507\*D  
Supreme Court Case No. 34818**

<b>DOCUMENT NAME</b>	<b>DATE FILED</b>	<b>PAGE NO.</b>
<b>Motion for Attorney's Fees</b>	<b>05/03/2007</b>	<b>56</b>
<b>Motion for Attorney's Fees</b>	<b>06/08/2007</b>	<b>67</b>
<b>Motion for Correction of Illegal Sentence and Modify Current Sentence Under Rule 35 Correct Illegal Sentence</b>	<b>05/01/2007</b>	<b>28</b>
<b>Motion for Payment of Attorney's Fees</b>	<b>06/22/2007</b>	<b>102</b>
<b>Motion for Payment of Attorney's Fees</b>	<b>08/22/2007</b>	<b>113</b>
<b>Motion for Restitution</b>	<b>04/18/2007</b>	<b>16</b>
<b>Motion for Review Sentence Pursuant to Idaho Criminal Rule 35</b>	<b>05/01/2007</b>	<b>54</b>
<b>Motion to Continue</b>	<b>07/06/2007</b>	<b>107</b>
<b>Motion to Continue</b>	<b>10/11/2007</b>	<b>120</b>
<b>Notice of Appeal</b>	<b>04/27/2007</b>	<b>23</b>
<b>Notice of Appeal</b>	<b>11/30/2007</b>	<b>137</b>
<b>Order Appointing a State Appellate Public Defender</b>	<b>05/03/2007</b>	<b>61</b>
<b>Order Appointing Counsel</b>	<b>05/30/2007</b>	<b>65</b>
<b>Order Approving Payment of Attorney</b>	<b>06/26/2007</b>	<b>105</b>



## INDEX

**State of Idaho vs. Valentino Herrera  
District Court Case No. CR-2006-3507\*D  
Supreme Court Case No. 34818**

<b>DOCUMENT NAME</b>	<b>DATE FILED</b>	<b>PAGE NO.</b>
<b>Order Approving Payment of Attorney</b>	<b>08/23/2007</b>	<b>116</b>
<b>Order for Appointment of State Appellate Public Defender</b>	<b>12/14/2007</b>	<b>147</b>
<b>Order for Attorney's Fees</b>	<b>05/03/2007</b>	<b>59</b>
<b>Order for Attorney's Fees</b>	<b>06/13/2007</b>	<b>70</b>
<b>Order of Continuance</b>	<b>07/10/2007</b>	<b>109</b>
<b>Order of Continuance</b>	<b>10/15/2007</b>	<b>122</b>
<b>Order of Restitution</b>	<b>11/01/2007</b>	<b>133</b>
<b>Order of Restitution</b>	<b>11/01/2007</b>	<b>135</b>
<b>ROA</b>		<b>08</b>
<b>Table of Contents</b>		<b>02</b>

State of Idaho vs. Valentino Alex Herrera

Date	Code	User	Judge
6/20/2006	NEWC	CONNIE	New Case Filed
	CRCO	CONNIE	Criminal Complaint
	AFPC	CONNIE	Affidavit Of Probable Cause
	ARRN	CONNIE	Felony - First Appearance Arraignment Sheet
	CMIN	CONNIE	Court Minutes
	BOND	CONNIE	Bond Set @: \$2,500.00
	MENT	CONNIE	Minute Order on Arraignment
	ORPD	CONNIE	Order Appointing Public Defender & Notice of Hearing
	ORDR	KRAMER	Order
6/21/2006	BNDS	HOXSEY	Bond Posted - Surety (Amount 2500.00 )
	HRSC	CONNIE	Hearing Scheduled (Preliminary 06/30/2006 09:00 AM)
6/23/2006	MOTN	CARPENTE	Motion to Permit Attorney to Withdraw
	ORDR	CONNIE	Order Permitting Attorney to Withdraw
	SUBR	POLLARD	Subpoena Returned - Alan Garrett
	SUBR	POLLARD	Subpoena Returned - Roger A. Galow
6/28/2006	SUBR	POLLARD	Subpoena Returned - Timothy Pethtel
6/30/2006	WAIV	CONNIE	Waiver of Timely Preliminary Hearing
	CONT	CONNIE	Continued (Preliminary 07/14/2006 09:00 AM)
		CONNIE	Notice Of Hearing
7/5/2006	AMCO	CARPENTE	Amended Complaint Filed
	HRSC	CARPENTE	(Arraignment 07/14/2006 09:00 AM)
7/6/2006	SUBR	CONNIE	Subpoena Returned_T. Pethtel
7/7/2006	SUBR	HOXSEY	Subpoena Returned-A Garrett
	SUBR	HOXSEY	Subpoena Returned-R Galow
7/14/2006	CMIN	CONNIE	Court Minutes Hearing type: Preliminary Hearing date: 7/14/2006 Time: 11:20 am Audio tape number: #8 mag
	ARRN	CONNIE	Arraignment Sheet on amended charge
	DPRO	CONNIE	Dismissed by the Prosecutor (I18-907 Battery-aggravated) Count I
	PHHD	CONNIE	Hearing result for Preliminary held on 07/14/2006 09:00 AM: Preliminary Hearing Held
	BOUN	CONNIE	Bound Over (after Prelim)
	ORDR	CONNIE	Order of Transmittal to the District Court
	INFO	POLLARD	Information for the Crime of Battery on an Officer
7/19/2006	HRSC	TARA	Hearing Scheduled (Arraignment 08/03/2006 01:30 PM)
7/20/2006	NOHR	TARA	Notice of Hearing - ARRAIGNMENT

000008

State of Idaho vs. Valentino Alex Herrera

Date	Code	User	Judge
8/3/2006	HRHD	TARA	Hearing result for Arraignment held on 08/03/2006 01:30 PM: Hearing Held
	CMIN	TARA	Court Minutes - Set for Entry of Plea
8/7/2006	HRSC	TARA	Hearing Scheduled (Entry of Plea 08/24/2006 01:30 PM)
	NOHR	TARA	Notice of Hearing - Entry of Plea
8/24/2006	HRHD	TARA	Hearing result for Entry of Plea held on 08/24/2006 01:30 PM: Hearing Held
	CMIN	TARA	Court Minutes - Appeared & Plead NOT GUILTY
8/28/2006	HRSC	TARA	Hearing Scheduled (Status 09/15/2006 03:00 PM)
	ORPM	TARA	Order In Re: Pre-trial Motions
	RDIS	POLLARD	Request For Discovery
8/29/2006	MOTN	POLLARD	Motion for Preliminary Hearing Transcript
	ORDR	POLLARD	Order for Preliminary Transcript
9/15/2006	HRHD	TARA	Hearing result for Status held on 09/15/2006 03:00 PM: Hearing Held
9/19/2006	MENT	TARA	Minute Entry (09/15/06)
	HRSC	TARA	Hearing Scheduled (Jury Trial 10/25/2006 09:00 AM) # 2 SET / 2 DAYS
	HRSC	TARA	Hearing Scheduled (Pretrial Conference 10/20/2006 01:15 PM)
9/21/2006	ORPC	TARA	Order Re: Pretrial Conference
	ORTS	TARA	Order Re: Notice of Trial Setting & Jury Instructions
	NOSE	APAREDES	Notice Of Service
9/28/2006	SRDR	POLLARD	State's Response To Discovery Request
9/29/2006	TRAN	TARA	Transcript Filed - Prelim July 14, 2006
	MOTN	POLLARD	Motion to Transport
	AMND	POLLARD	Amended Information for the Crime of: Battery on an Officer
10/2/2006	ORDR	POLLARD	Order of Transport
10/3/2006	SUBR	POLLARD	Subpoena Returned - Daniel Mason Henrie
	SUBR	POLLARD	Subpoena Returned - Timothy Pethel
	SUBR	POLLARD	Subpoena Returned - Roger A. Galow
	SUBR	POLLARD	Subpoena Returned - Cassia Regional Medical Center
10/4/2006	SSDR	POLLARD	State's Supplemental Discovery Response
10/11/2006	SUBR	POLLARD	Subpoena Returned - Alan Garrett
10/19/2006	MOTN	POLLARD	Motion for Shortening Time and Notice of Hearing
	MTDI	POLLARD	Motion To Dismiss

000009

State of Idaho vs. Valentino Alex Herrera

Date	Code	User	Judge
10/20/2006	HRHD	POLLARD	Hearing result for Pretrial Conference held on 10/20/2006 01:15 PM: Hearing Held
10/23/2006	MENT	POLLARD	Minute Entry
10/24/2006	CMIN	POLLARD	Court Minutes - Court Disqualifies Himself
10/25/2006	CONT	POLLARD	Hearing result for Jury Trial held on 10/25/2006 09:00 AM: Continued # 2 SET / 2 DAYS
	DISA	POLLARD	Disqualification Of Judge - Automatic
10/27/2006	ORDR	TARA	Order of Assignment - JUDGE MELANSON
	HRSC	TARA	Hearing Scheduled (Motion 11/27/2006 08:30 AM) MOTION TO DISMISS IN CASSIA COUNTY
	NOHR	TARA	Notice of Hearing - Motion to Dismiss
11/9/2006	MOTN	POLLARD	Motion for Attorney's Fees
11/22/2006	ORDR	POLLARD	Order for Attorney's Fees
12/5/2006	CONT	TARA	Continued (Motion 12/18/2006 09:00 AM) MOTION TO DISMISS IN MINIDOKA
	NOHR	TARA	Notice of Hearing - Motion to Dismiss
	CONT	TARA	Continued (Motion 12/18/2006 03:00 PM) MOTION TO DISMISS IN MINIDOKA
	ANOH	TARA	Amended Notice Of Hearing - Motion to Dismiss
12/7/2006	MOTN	CONNIE	Motion for Attorney Fees
12/13/2006	ORDR	POLLARD	Order for Attorney's Fees
12/14/2006	HRSC	TARA	Hearing Scheduled (Pretrial Conference 12/18/2006 03:00 PM)
	HRSC	TARA	Hearing Scheduled (Jury Trial 01/03/2007 09:00 AM) # 1 set / 3 days
	ORPT	POLLARD	Order Re: Pretrial Conference
	ORTS	POLLARD	Order Re: Notice of Trial Setting & Jury Instructions
12/18/2006	HRHD	POLLARD	Hearing result for Pretrial Conference held on 12/18/2006 03:00 PM: Hearing Held
	HRHD	POLLARD	Hearing result for Motion held on 12/18/2006 03:00 PM: Hearing Held MOTION TO DISMISS IN MINIDOKA
12/20/2006	CMIN	POLLARD	Court Minutes - Motions DENIED
	ORDR	POLLARD	Order Denying Defendant's Motion to Dismiss
	MOTN	POLLARD	Motion for Order of Transport
	ORDR	POLLARD	Order of Transport
	SSDR	POLLARD	Second State's Supplemental Discovery Response
12/26/2006	MOTC	TARA	Motion To Continue Hearing

State of Idaho vs. Valentino Alex Herrera

Date	Code	User	Judge
12/26/2006	HRSC	TARA	Hearing Scheduled (Motion 12/29/2006 09:00 AM) Motion to Continue
	NOHR	TARA	Notice of Hearing - Motion to Continue
12/28/2006	SUBR	POLLARD	Subpoena Returned - Cary Grant Bristol
12/29/2006	SUBR	POLLARD	Subpoena Returned - Roger Galow
	HRHD	POLLARD	Hearing result for Motion held on 12/29/2006 09:00 AM: Hearing Held Motion to Continue - DENIED
1/3/2007	SUBR	POLLARD	Subpoena Returned - Tim Pethel
	SSDR	POLLARD	Third State's Supplemental Discovery Response
	JTST	POLLARD	Hearing result for Jury Trial held on 01/03/2007 09:00 AM: Jury Trial Started # 1 set / 3 days
	PCHA	POLLARD	Peremptory Challenge
	JURY	POLLARD	Jury List***roll Call
		POLLARD	Initial jury seating
	JFSA	POLLARD	Jury Final Seating Arrangement
1/4/2007	HRSC	POLLARD	Hearing Scheduled (Sentencing 02/13/2007 08:30 AM)
	NOHR	POLLARD	Notice of Hearing - Sentencing
	EXFI	POLLARD	Exhibit Filed: State
	EXFI	POLLARD	Exhibit Filed: - Defense
		POLLARD	Jury Trial Witness List
	VERD	POLLARD	Verdict Of The Jury
	CMIN	POLLARD	Court Minutes - Guilty by Jury
	OPSI	POLLARD	Order to Attend PSI Interview & Appear for Sentencing
	ORDR	POLLARD	Order Revoking Bond
1/19/2007	LETR	POLLARD	Letter Recieved - Presentence Investigator
1/24/2007	ORDR	TARA	Order Psychological Evaluation (at County Expense)
2/2/2007	MOTN	POLLARD	Motion and Order of Transport
2/5/2007	CONT	TARA	Continued (Sentencing 03/13/2007 08:30 AM)
	ANOH	TARA	Amended Notice Of Hearing - Sentencing
2/12/2007	CMIN	POLLARD	Court Minutes - From 12-29-06 - Motion to Continue was Denied
2/21/2007	MOTN	POLLARD	Motion for Attorney's Fees
	ORDR	POLLARD	Order for Attorney's Fees
2/26/2007		POLLARD	Psychological Evaluation Filed Dated 2-21-07
3/12/2007	PRES	TARA	Pre-Sentence Investigation Report
			Document sealed
3/13/2007	LETR	POLLARD	Letter Received

000011

State of Idaho vs. Valentino Alex Herrera

Date	Code	User		Judge
3/15/2007	LETR	TARA	Letter Recieved from defendant to Judge	John Melanson
3/16/2007	MOTN	POLLARD	Motion for Attorney's fees	John Melanson
	PRES	KRAMER	Addendum to Pre-Sentence Investigation Report	John Melanson
3/20/2007	ORDR	POLLARD	Order for Attorney's Fees	John Melanson
3/22/2007	CONT	TARA	Continued (Sentencing 04/16/2007 08:30 AM) IN CASSIA	John Melanson
		TARA	Notice of Hearing - Sentencing	John Melanson
	LODG	POLLARD	Lodged - Letter	John Melanson
4/13/2007	MOTN	POLLARD	Motion to Withdraw as Defendant's Attorney	John Melanson
	MOTN	POLLARD	Motion for New Trial, Striking of the Presentence Addendum, Striking of Psychological Examination and Petition for New Examination, Motion to Strike Persistent Violator Charge	John Melanson
4/16/2007	HRHD	POLLARD	Hearing result for Sentencing held on 04/16/2007 08:30 AM: Hearing Held IN CASSIA	John Melanson
	CMIN	POLLARD	Court Minutes - Sentence IMPOSED	John Melanson
	ORCM	POLLARD	Order Of Commitment	John Melanson
	FOGT	POLLARD	Found Guilty After Trial (I18-915 {F} Assault Or Battery Upon Certain Personnel)	John Melanson
	FOGT	POLLARD	Found Guilty After Trial (I19-2514 Enhancement-persistent Violator)	John Melanson
4/18/2007	HRSC	TARA	Hearing Scheduled (Motion 05/14/2007 08:30 AM) IN CASSIA	John Melanson
	MOTN	TARA	Motion for Restitution	John Melanson
	NOHR	TARA	Notice of Hearing - Motion for Restitution	John Melanson
4/25/2007	SNIC	POLLARD	Sentenced To Incarceration (I18-915 {F} Assault Or Battery Upon Certain Personnel) Confinement terms: Credited time: 143 days. Penitentiary determinate: 5 years.	John Melanson
	SNIC	POLLARD	Sentenced To Incarceration (I19-2514 Enhancement-persistent Violator) Confinement terms: Penitentiary determinate: 5 years. Penitentiary indeterminate: 20 years.	John Melanson
	CONC	POLLARD	Concurrent Sentencing (I19-2514 Enhancement-persistent Violator) Consecutive Sentence: To Run Consecutive with Part I Count II Battery on an Officer Concurrent with:	John Melanson
	CONC	POLLARD	Concurrent Sentencing (I18-915 {F} Assault Or Battery Upon Certain Personnel) Consecutive Sentence: Consecutive with Ct. III Part II Persistent Violator Concurrent with:	John Melanson
	JDMT	POLLARD	Judgment of Conviction, Order of Commitment: Part I, Battery on an Officer; and Part II, Persistent Violator	John Melanson
4/27/2007	NOTC	POLLARD	Notice of Appeal	John Melanson

000012

State of Idaho vs. Valentino Alex Herrera

Date	Code	User	Judge
4/27/2007	MOTN	POLLARD	Motion for Appointment of State Appellate Public Defender
	APDC	KRAMER	Appeal Filed in District Court
	APSC	KRAMER	Appealed to the Supreme Court
4/30/2007	BNDE	POLLARD	Surety Bond Exonerated (Amount 2,500.00)
5/1/2007	MOTN	POLLARD	Motion for Correction of Illegal Sentence and Modify Current Sentence Under Rule 35
	MOTN	POLLARD	Motion for Appointment of New Counsel - Affidavit in Support of Motion for Appointment of New Counsel
	MOTN	POLLARD	Motion to Review Sentence Pursuant to Idaho Criminal Rule 35
	MOTN	POLLARD	Motion for Attorney's Fees
5/2/2007	OBJT	POLLARD	Objection to Defendant's Motion to Reconsider Sentence
5/3/2007	ORDR	POLLARD	Order Appointing a State Appellate Public Defender
	ORDR	POLLARD	Order For Attorney's Fees
5/14/2007	CONT	TARA	Continued (Motion 05/30/2007 08:30 AM) IN CASSIA
		TARA	Notice of Hearing - Motion
5/30/2007	CMIN	TARA	Court Minutes - continue - appoint C. Zollinger
	ORDR	TARA	Order Appointing Counsel - CLAYNE ZOLLINGER
	ORPD	TARA	Defendant: Herrera, Valentino Alex Order Appointing Public Defender Public defender Clayne S Zollinger
6/8/2007	MOTN	POLLARD	Motion for Attorney's Fees
6/11/2007	CONT	TARA	Continued (Motion 07/06/2007 08:30 AM) Rule 35 Motion / Motion for Restitution IN Rupert
		TARA	Notice of Hearing - Rule 35 Motion / Motion for Restitution
	RDIS	POLLARD	Request For Discovery
6/12/2007	SSDR	POLLARD	State's Supplemental Discovery Response
6/13/2007	ORDR	POLLARD	Order for Attorney's Fees
	AMND	POLLARD	Amended / Supplemental Motion for Correction or Reduction of Sentence, ICR 35 and Memorandum in Support
6/14/2007	NOTC	KRAMER	Amended Notice of Appeal
6/22/2007	MOTN	POLLARD	Motion for Payment of Attorney's Fees
6/26/2007	ORDR	POLLARD	Order Approving Payment of Attorney
7/6/2007	MOTC	NEVAREZ	Motion To Continue

000013

State of Idaho vs. Valentino Alex Herrera

Date	Code	User	Judge
7/9/2007	CONT	TARA	Continued (Motion 07/26/2007 09:00 AM) Rule 35 Motion / Motion for Restitution IN Rupert John Melanson
7/10/2007	ORDR	TARA	Order of Continuance John Melanson
7/26/2007	CONT	TARA	Continued (Motion 08/31/2007 02:00 PM) Rule 35 Motion / Motion for Restitution John Melanson
		TARA	Notice of Hearing - Rule 35 Motion / Motion for Restitution John Melanson
	CMIN	POLLARD	Court Minutes - Continued John Melanson
8/22/2007	MOTN	POLLARD	Motion for Payment of Attorney's Fees John Melanson
8/23/2007	ORDR	POLLARD	Order Approving Payment of Attorney John Melanson
8/31/2007	CONT	TARA	Continued (Motion 10/16/2007 08:30 AM) Rule 35 Motion / Motion for Restitution John Melanson
		TARA	Notice of Hearing - Rule 35 Motion / Motion for Restitution John Melanson
	CMIN	TARA	Court Minutes - continued John Melanson
10/2/2007	CONT	TARA	Continued (Motion 10/18/2007 09:00 AM) Rule 35 Motion / Motion for Restitution John Melanson
		TARA	AMENDED Notice of Hearing - Rule 35 Motion / Motion for Restitution John Melanson
10/11/2007	CONT	TARA	Continued (Motion 11/01/2007 08:30 AM) Rule 35 Motion / Motion for Restitution John Melanson
		TARA	2nd AMENDED Notice of Hearing - Rule 35 Motion / Motion for Restitution John Melanson
	MOTN	TARA	Motion to Continue John Melanson
10/15/2007	ORDR	TARA	Order to Continue John Melanson
11/1/2007	CMIN	TARA	Court Minutes Hearing type: Rule 35 Motion / Motion for Restitution Hearing date: 11/1/2007 Time: 8:43 am Court reporter: Maureen Newton John Melanson
	HRHD	TARA	Hearing result for Motion held on 11/01/2007 08:30 AM: Hearing Held Rule 35 Motion / Motion for Restitution John Melanson
	REST	TARA	Order Of Restitution - Cassia County District Court Fund \$1,425.00 John Melanson
	REST	TARA	Order Of Restitution - MCCJC \$ 155.94 John Melanson
11/30/2007	NOTC	KRAMER	Notice of Appeal - Restitution John Melanson
	CCOM	KRAMER	Clerks Certificate Of Mailing John Melanson
	ORDR	TARA	Memorandum Decision and Order on Motion to Reconsider Sentence I.C.R. 35 John Melanson

000014



State of Idaho vs. Valentino Alex Herrera

Date	Code	User	Judge
11/30/2007	HRSC	TARA	Hearing Scheduled (Sentencing 01/08/2008 01:00 PM)
		TARA	Notice of Hearing - Sentencing
12/12/2007	MOTN	NEVAREZ	Motion for Appointment of State Appellate Public Defender
12/14/2007	ORDR	NEVAREZ	Order for Appointment of State Appellate Public Defender
		TARA	Order Approving Attorney's Fees \$104.50
12/19/2007	ORDR	TARA	Order to Transport (from Boise to MCCJC for sentencing on 01/08/08)
	MOTN	NEVAREZ	Motion to Transport
12/21/2007	MOTN	TARA	Motion for New Trial, Striking of the Presentence Addendum, Striking of Psychological Examination and Petition for New Examination, Motion to Strike Persistent Violator Charge, Motion for Appointment of New Counsel, Motion to Withdraw Guilty Plea, Motion for Bail Pending Appeal
	MOTN	TARA	Motion for New Trial and Appointment of New Counsel
	HRSC	TARA	Hearing Scheduled (Motion 01/08/2008 01:00 PM) Pending Pro se Motions
		TARA	Notice of Hearing - Pending Motions
1/4/2008		NEVAREZ	Memorandum of Law And Correction

000015

FILED

2007 APR 18 A 11:37

LARRY A MICKELSEN

BY   
DEPUTY

1 **ALFRED E. BARRUS** (ISB #1704)  
Prosecuting Attorney  
2 **BLAINE P. CANNON** (ISB #5575)  
Deputy Prosecuting Attorney  
3 **DOUGLAS G. ABENROTH** (ISB #7181)  
Deputy Prosecuting Attorney  
4 **Cassia County, Idaho**  
1918 Overland Avenue  
Post Office Box 7  
Burley, Idaho 83318  
Telephone: 208-878-0419  
Facsimile: 208-878-2924

5  
6 Attorneys for State of Idaho  
06-134

7  
8 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
9 STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

10 **STATE OF IDAHO,**

Case No. CR-2006-03507\*D

11 Plaintiff,

12 vs.

**MOTION FOR  
RESTITUTION**

13 **VALENTINO HERRERA,**

14 Defendant.  
15 \_\_\_\_\_

16 COMES NOW Blaine P. Cannon, Deputy Prosecuting Attorney for Cassia  
17 County, Idaho, and moves the Court to order restitution to the victim and others who may  
18 have suffered a loss because of this crime—or who may be entitled to restitution, pursuant to  
19 Idaho Code Section 19-5301 et. seq.

20 The State requests an evidentiary hearing and oral argument.

21  
22 DATED this 17 day of April, 2007.

23  
24 **BLAINE P. CANNON**  
Deputy Prosecuting Attorney

25   
26

27  
28 **MOTION FOR RESTITUTION - 1**


H:\Shantel\County Criminal\Mo. Orders, Objections, Stip\Mo Restitution Hearing-District Ct.wpd

000016

1 CERTIFICATE OF MAILING

2 I hereby certify that on the 17 day of April, 2007, I caused a true and correct  
3 copy of the within and foregoing MOTION FOR RESTITUTION to be mailed to the  
4 following:

5 Kent Jensen  
6 Attorney at Law  
7 P.O. Box 276  
8 Burley, Idaho 83318

9   
10 BLAINE P. CANNON  
11 Deputy Prosecuting Attorney  
12  
13  
14  
15  
16  
17  
18  
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26  
27  
28

ORIGINAL

DISTRICT COURT  
CRIMINAL DIVISION

FILED

2007 APR 25 P 2:44

LARRY A. MICKELSEN

BY  
DEPUTY

1 **ALFRED E. BARRUS** (ISB #1704)  
*Prosecuting Attorney*  
2 **BLAINE P. CANNON** (ISB #5575)  
*Deputy Prosecuting Attorney*  
3 **DOUGLAS G. ABENROTH** (ISB #7181)  
*Deputy Prosecuting Attorney*  
4 **Cassia County, Idaho**  
1918 Overland Avenue  
Post Office Box 7  
Burley, Idaho 83318  
Telephone: 208-878-0419  
5 Facsimile: 208-878-2924

6 Attorneys for State of Idaho  
06-134

7 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
8 STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA  
9

10 **STATE OF IDAHO,**

**Case No. CR 2006-03507 D**

11 Plaintiff,

**JUDGMENT OF CONVICTION,  
ORDER OF COMMITMENT:**  
Part I, Battery on an Officer; and  
Part II, Persistent Violator

12 vs.

13 **VALENTINO ALEX HERRERA,**

14 DOB: [REDACTED]

SS#: [REDACTED]

15 Defendant.

16 On August 3, 2006, the defendant came into Court with his attorney, Kent Jensen,  
17 along with Blaine P. Cannon, Deputy Prosecuting Attorney, to be arraigned upon the Information  
18 filed against him by the State of Idaho, charging the defendant with Battery on an Officer, which  
19 said crime was committed on June 4, 2006.

20 The Court, after conducting the arraignment, asked the defendant if he pleaded  
21 "Guilty" or "Not Guilty" to the offense charged in the Information, and, thereupon, the defendant,  
22 pleaded that he was "Not Guilty" as charged in the Information.

23 On January 4, 2007, the defendant again came into court with his attorney, Kent  
24 Jensen, and was found guilty of Battery on an Officer by a jury. On the same day, the defendant  
25 admitted to the charge of Persistent Violator.

26 On April 16, 2007, the defendant again came into Court with his attorney, Kent  
27 Jensen, along with the State's attorney, Blaine P. Cannon, and was informed by the Court that this  
28

**JUDGMENT OF CONVICTION, ORDER OF COMMITMENT -1**

1 was the time and place set for sentencing, and was reminded of earlier Court proceedings.

2 The defendant was then asked if he had any legal cause or reason to offer why  
3 judgment and sentence should not be pronounced against him, to which he replied that he  
4 had none. No sufficient cause being shown or appearing to the Court, the Court rendered its  
5 Judgment, as follows:

6 **IT IS ORDERED, ADJUDGED AND DECREED** that the defendant be,  
7 and is hereby convicted of Battery on an Officer, a felony, in violation of I.C. § 18-915(d) and  
8 18-903, and of being a Persistent Violator in violation of Idaho Code Section 19-2514.

9 **IT IS FURTHER ORDERED** that the defendant be, and is hereby guilty, as  
10 charged and convicted; that the offense for which the defendant is adjudged guilty herein was  
11 committed on June 4, 2006.

12 **IT IS FURTHER ORDERED** that the defendant be, and is hereby sentenced,  
13 pursuant to the Unified Sentencing Act, Idaho Code, Section 19-2513, to the custody of the  
14 Idaho State Board of Correction, to be held and incarcerated by such Board, as follows:

15 **PART I - COUNT I: BATTERY ON AN OFFICER**

16 For a minimum fixed and determinate period of confinement of five (5)  
17 years; such fixed minimum period shall thereafter be followed by an indeterminate  
18 period of custody of up to zero (0) years, for a total period of confinement not to exceed  
19 five (5) years.

20 **PART II: PERSISTENT VIOLATOR**

21 For a minimum fixed and determinate period of confinement of five (5)  
22 years; such fixed minimum period shall thereafter be followed by an indeterminate  
23 period of custody of up to twenty (20) years, for a total period of confinement not to  
24 exceed twenty five (25) years.

25 That the sentence for Part II: Persistent Violator shall run consecutive to  
26 the sentence for Part I - Count I, Battery on an Officer.

**IT IS FURTHER ORDERED:**

(a) That pursuant to Idaho Code § 72-1025, that the defendant pay a fine in the sum of Fifty Dollars (\$50.00) *for each convicted count* to be applied to the Victim's Compensation Fund;

(b) That, pursuant to Idaho Code § 31 -3201A(b), the defendant pay Court costs of Seventeen and 50/100 Dollars (\$17.50) *for each convicted count*;

(c) That, pursuant to Idaho Code § 31-3201(B), the defendant pay a P.O.S.T. Academy fee in the sum of Ten Dollars (\$10.00) *for each convicted count*.

(d) That, defendant shall pay an administrative surcharge fee to Cassia County in the sum of Ten Dollars (\$10.00) *for each convicted count*.

(e) That, pursuant to Idaho Code § 31-3201(5), the defendant shall pay a Ten Dollar (\$10.00) ISTARS Technology Fee *for each convicted count*.

(f) That the defendant shall receive credit for one hundred forty three (143) days served in the county jail through April 16, 2007.

(g) That the defendant shall reimburse Cassia County for any period of time spent in the county jail with regards to this case, at a rate of \$25.00 per day, not to exceed \$500.00 as authorized by I.C. § 20-607.

(h) That, defendant shall reimburse Cassia County for the services of the Public Defender, pursuant to Idaho Code § 19-4705, in the sum of Twelve Hundred Dollars (\$1,200.00).

(i) That the defendant shall pay restitution to the victim(s).

(j) Pursuant to Idaho Code § 19-5304(2), under the Victim's Rights Statute, the Court will issue a separate Order of Restitution to the victims herein, to which reference is hereby made.

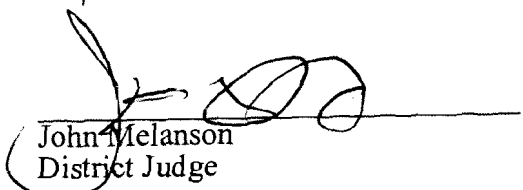
(k) That the defendant is ordered to comply with the Idaho DNA and Genetic Marker Act pursuant to Idaho Code Section 19-5508.

**JUDGMENT OF CONVICTION, ORDER OF COMMITMENT -3**

1  
2  
3 **IT IS FURTHER ORDERED** that the bond heretofore posted, if any, in the  
4 above-entitled action be, and the same is hereby, exonerated.

5 **IT IS FURTHER ORDERED** that the defendant be committed to the custody  
6 of the Sheriff of Cassia County, Idaho, for delivery forthwith to the custody of the Idaho State  
7 Board of Corrections.

8 **DATED** this 24<sup>th</sup> day of April, 2007.

9  
10   
11 John Melanson  
12 District Judge  
13  
14  
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1  
2  
3 **CLERK'S CERTIFICATE OF MAILING**

4 I hereby certify that a true and correct copy of the foregoing Order / Judgment  
5 was mailed, postage prepaid, this 30 day of April, 2007 to the following:

6 Blaine P. Cannon  
7 Deputy Prosecuting Attorney  
8 P.O. Box 7  
9 Burley, ID 83318

10 David Haley  
11 Mini-Cassia Public Defender  
12 P.O. Box 188  
13 Burley, Idaho 83318

14 Mini-Cassia Criminal Justice Center  
15 1415 Albion Avenue  
16 Burley, Idaho 83318

17 Probation and Parole  
18 1354 Albion Avenue  
19 Burley, Idaho 83318

20 *(certified copy)*  
21 Department of Corrections  
22 1299 North Orchard Street, Suite 110  
23 Boise, Idaho 83706

24 *(if applicable)*  
25 Treasurer's Office  
26 Cassia County Courthouse  
27 1459 Overland Avenue  
28 Burley, Idaho 83318

*(certified copy - sexual offenses)*  
Cassia County Sheriff's Office  
Attention: Tim Little  
129 East 14<sup>th</sup> Street  
Burley, Idaho 83318

LARRY A. MICKELSEN  
CLERK OF THE DISTRICT COURT

By   
Deputy Clerk

JUDGMENT OF CONVICTION, ORDER OF COMMITMENT -5



1 Kent D. Jensen ISB #4424  
2 2042 Overland  
3 P.O. Box 276  
4 Burley, Idaho 83318  
5 Telephone: 208-878-3366  
6 Fax: 208-878-3368

DISTRICT COURT  
CASSIA COUNTY, ID  
FILED  
2007 APR 27 A 11:59  
LARRY A MICKELSEN  
BY  
DEPUTY

7 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
8 OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF CASSIA

9 STATE OF IDAHO,

10 Plaintiff,

11 v.

12 VALENTINO HERRERA,

13 Defendant.

Case No. CR 2006- 3507\*D

NOTICE OF APPEAL

14 TO: THE CLERK OF CASSIA DISTRICT COURT AND CASSIA COUNTY PROSECUTOR:

15 1. The Defendant/ Appellant, Valentino Herrera , appeals against the  
16 Plaintiff/Respondent, the State of Idaho, to the Idaho Supreme Court from the trial and sentence  
17 imposed on the Appellant in the above entitled proceeding on the 16<sup>th</sup> day of April, 2007,  
18 Honorable John Melanson presiding.

19 2. That the party has a right to appeal to the Idaho Supreme Court, and the judgments or  
20 orders described in paragraphs 1 and 2 are appealable orders under and pursuant to Rule 12(a)  
21 I.A. R. and otherwise at law.

22 3. A preliminary statement of the issues on appeal, which the appellant then intends to  
23 assert in the appeal, provided, any such list of issues on appeal shall not prevent the Appellant  
24 from asserting other issues on appeal, is as follows:

25 a. The evidence submitted by the State was insufficient to support a finding of guilt

b. The District Court erred in denying the appellant's motion to dismiss on the grounds that the complaining witness was not a police officer.

c. The District Court erred in denying the appellant's motion to dismiss the persistent violator charge.

e. The sentence imposed upon the appellant is excessive

4. There has been no order entered sealing any portion of the record.

5. Reporter's transcripts of the Preliminary Hearing held on July 14<sup>th</sup>, 2006, of the Motion to Dismiss held on December 18<sup>th</sup>, 2006, of the trial held on January 3<sup>rd</sup>, 2007, and the sentencing on April 16<sup>th</sup>, 2007 are requested.

6. The Appellant request no documents to be included in the clerk's records.

7. I certify:

a. That a copy of this Notice of Appeal has been served on the reporter and the clerk.

b. That the appellate filing fee has been paid or is waived.

c. That service has been made upon all parties required to be served pursuant to Rule

20 and the Attorney General of Idaho pursuant to Section 67-1401 (1), Idaho Code.

DATED this 21 day of April, 2007.

  
Kent D. Jensen

CERTIFICATE OF MAILING

I hereby certify that on this 27<sup>th</sup> day of April, 2007, I served the foregoing document upon the attorney for the Plaintiffs by depositing a copies thereof by the following method;

Cassia County Prosecutor  
Cassia Courthouse Box  
Burley, ID 83318

Lawrence Wasden  
Attorney General of Idaho  
PO Box 83720  
Boise, ID 83720

Denise Schloder  
Court Reporter  
Cassia Courthouse Box  
Burley, ID 83318

DATED this \_\_\_\_\_ day of April, 2007.

  
Kent D. Jensen

FILED

2007 APR 27 A 11:59

LARRY A. MICKELSEN

BY   
DEPUTY

Kent D. Jensen ISB #4424  
2042 Overland  
P.O. Box 276  
Burley, Idaho 83318  
Telephone: 208-878-3366  
Fax: 208-878-3368

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF CASSIA

STATE OF IDAHO,

Plaintiff,

v.

VALENTINO HERRERA,

Defendant.

Case No. CR 2006- 3507\*D

MOTION FOR APPOINTMENT OF STATE  
APPELLATE PUBLIC DEFENDER

Comes now, Kent D. Jensen, court appointed Public Defender for the Defendant in the above-entitled action, and moves the Court for an Order appointing the State Appellate Public Defender's Office to represent the defendant, Valentino Herrera, in all matters relating to Defendant's appeal to the Idaho Supreme Court, a Notice of appeal having been filed with the Clerk of the above Court on April 27, 2007.

This motion is based on the record, documents and pleadings on the file herein, together with the law in such cases made and provided

DATED this 27<sup>th</sup> day of April, 2007.

  
Kent D. Jensen

CERTIFICATE OF SERVICE

I hereby certify that on this 24<sup>th</sup> day of April, 2007, I served the foregoing document upon the interested parties by depositing copies thereof in the United States Mail, postage prepaid, addressed as follows:

Cassia County Prosecutor  
Cassia County Courthouse Box  
Burley, Idaho, 83318

Lawrence Wasden  
Attorney General of Idaho  
PO Box 83720  
Boise, ID 83720

Molly Huskey  
State Appellate Public Defender  
3647 Lake Harbor Lane  
Boise, ID 83703

  
Kent D. Jensen

Valentino A. Herrera 18269  
P.O. Box 14 #15 - B/13  
Boise Id. 83707

ORIGINAL

DISTRICT COURT  
CASSIA COUNTY ID

FILED

Defendant

In The District Court of The Fifth Judicial District  
of The State of Idaho, IN and for ~~the~~ County of Cassia

2007 MAY -1 A.P. 58  
LARRY A. MICKELSEN  
CLERK

State of Idaho,  
Plaintiff

v.

Valentino A. Herrera,  
Defendant

06-3507  
Case no. CR-3506  
Motion for: Correction  
of Illegal Sentence and  
Modify Current Sentence  
under Rule 35  
Correct Illegal Sentence.

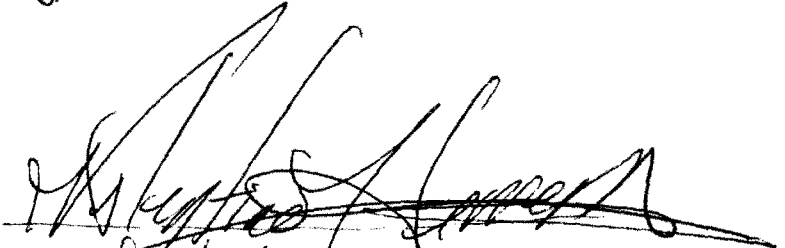
Comes now, Valentino A. Herrera, in the above entitled matter and moves this Honorable Court, to and for, A Correction of illegal Sentence,

1. Defendant prays for his day in court to move this Honorable Court and show why Sentence is Illegal so this Honorable Court may correct it.
2. Defendant also prays that this Honorable Court grant his motion for Correction of Illegal Sentence, and proceed forward and correct current sentence, according to the current laws of Idaho.
3. Defendant prays this Honorable Court appoint a date so that this issue may be brought before this Honorable Court, and defendant also moves this Honorable Court to grant and order that the defendant be brought in to the presence of this court so that he may plead his case.

000028

himself, but has not motioned for  
Subsection (D), which was charged with  
Monte Carlson at the time the witness was  
heard. Stated that he would rule for the  
State because in fact he thought that Garrett  
was a Police officer not just a bailiff. So  
he asked if it bothered us, and if it  
did, he would step down. I respect the  
fact that at least he said he would probably  
rule for the State. Well we go Judge Matheson.  
he ruled for Garrett to be viewed as a  
police officer. I asked Jensen if we could  
appeal that ruling. he said yes but we had  
to get permission, and he never did do it  
can the I wanted him to do it even  
told him that I would write my speedy  
trial report. Well then <sup>no</sup> lawyer time goes by.  
And on Jan 2nd, Jensen calls and tells me  
we have jury trial at 9:00 in the morning


Dated this 27<sup>th</sup> day of April 2007

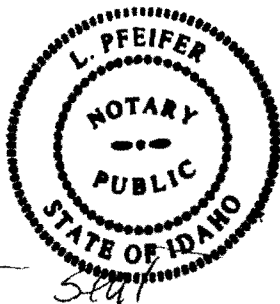
  
Defendant

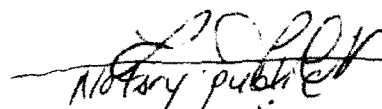
### Certificate of Service

I Hereby Certify that on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_ I mailed a true and correct copy of this motion to correct, Illegal Sentence and modification of current Sentence, to the Clerk of the Fifth District in the Cassia County Courthouse in Burley Idaho 83318, and the State Attorney, Blaine Browning, Defendant's Counsel Kent Jensen, By the Via. U.S. mail system.

Sworn and subscribed to, before me this 27<sup>th</sup> day  
in the month of April 2007

  
Defendant



  
Notary public  
05/11/2012  
my commission ends 000030



I tell him "what?" he says, and by law he is ob-  
ligated to extend the status offer to you.  
I say what's that. They'll drop the per-  
sistent violator, if I plead guilty to the  
Battery. I tell him where did this come  
from? He says kind of laughing oh I must  
have stuck in the back of my file I'm  
sorry I tell him to put a motion to  
postpone my jury trial, he says <sup>I wish I</sup> ~~I wish~~  
<sup>would have been told about the persistent charge Friday</sup> ~~you would have told me that Friday.~~ I  
say put a motion to dismiss the per-  
sistent, and disqualify the Judge cause even  
the Judge said he was acquainted to slon  
from transporting prisoners to Rupert. The  
Next morning at the Judges Chambers two  
motions were heard not 3, one to dis-  
qualify Judge, correct Motion to ~~dismiss~~ <sup>dismiss</sup> the  
P. Violator. Because I will not  
stand in the Judge's way. Keep your glasses  
off. I was with you on that one.

000031

P. 1

DISTRICT COURT  
CASSIA COUNTY ID

FILED

2007 MAY -1 A 9 58

LARRY A MICKELSEN

BY  
DEPUTY

Valentino Alex Herrera  
1415 Albion Ave  
Burley Id. 83318

IN THE DISTRICT COURT OF THE Fifth JUDICIAL DISTRICT  
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF CASSIA

State of Idaho  
plaintiff

v.  
Valentino Alex Herrera  
defendant

Case No CR-06-3507  
motion for appointment of  
New Counsel,  
Affidavit in support  
of motion for appointment  
of New Counsel - Due to  
current ineffective counsel,  
motion to postpone sentencing  
while considering motions  
in the above titled matter

Comes now Valentino Alex Herrera  
and moves this Honorable Court to defendants motion for appointment of New Counsel  
for the reasons more fully set forth herein and in the Affidavit in Support of the  
motion for appointment of New Counsel.

1. Defendant is currently incarcerated within the Mini Cassia Criminal Justice  
center under the direct care, custody and control of Dennis Dexter, Director  
of the Mini Cassia Criminal Justice Center, in Burley Idaho 83318.

2. The issues to be presented in this case may become too complex for the defendant  
to properly pursue.

3. Defendant lacks the knowledge and skill needed to represent himself

4. Defendant and current counsel have had serious conflict and current

counsel has been ineffective, Ousey, and prevented for this motion  
to the point of conviction. 000032

motion & Affidavit in support of appointment of New Counsel

Affidavit in Support of Appointment  
of New Counsel Due to Current Conflict of Interest

Thank you your Honor.

I, Valentino Alce Herrera come now and swear to you that from the date, His Honorable Monte C. Carlson voluntarily step down from presiding on this case CR 063507, My Current Counsel Kent D. Jensen, appointed to me, by His Honor, Judge Crabtree, said Counsel has deliberately refused verbal and also written requests to perform on the behalf of this defendant. This defendant is uncertain of the specific dates and Court time, to most of the issues he will describe, but it will be to the best of my knowledge.

The grounds that his Honor, Carlson stepped down was he didn't want prejudice or have this case approached on his beliefs. We, Counsel and I accepted. Appointed later was his Honor John Melanson, and his first duty was to rule on a motion filed by Kent Jensen, to have the Court rule on Alan Barnett Victim in said original complaint against defendant, to see if Alan Barnett did indeed qualify as a former police officer. His Honor ruled for the state.

Upon denial of motion by his Honor, I asked Kent if we could appeal the decision just made by the Court. He said yes, but he need to get special permission to do it. I told him I'd like for him to do it. He said that it could be

1 a law process. I told him that it was  
 2 made. I also told him I would wait my speedy  
 3 trial right. He said he would look into it. I'm still  
 4 waiting. This ruling took place in the Mindota  
 5 County District Court House in Rupert Idaho. I  
 6 was residing at 910 Miller Burley Idaho at  
 7 the time.

8 At another point after that ruling the  
 9 Court had a hearing on a matter that I  
 10 cannot recall the issue was. I remember it  
 11 specifically because I was sent a notice in the  
 12 mail to be in court. I left my home and  
 13 walked to the Court house in Burley. Upon arrival  
 14 there was no one in the Courtroom. I went to the  
 15 clerk's office. She informed me that the hearing  
 16 was in Rupert. My Notice said Burley. I  
 17 asked her to call Rupert and tell them that I  
 18 would be and get there. I didn't have a  
 19 car, I didn't have a license. I ran home, my mom  
 20 is there. I asked her to take me. In late, my bus  
 21 isn't in the Courtroom. Approx. 10 minutes later I  
 22 got a tap on the shoulder. It's Kent. He says  
 23 com'on. I go with him in the hall. He says  
 24 it was just a pre trial conference. He's been  
 25 in for some time. He's been and so on.

1 Before going home I asked him how about  
 2 opposing the prior ruling. As he said he  
 3 would look into it, I reminded him that I  
 4 would waive my right to a speedy trial. He  
 5 then again said he'd look into it. I'm not  
 6 positive, but see to two weeks later I  
 7 got a phone call at my mother's home at  
 8 910 Miller, Bury, Id.  
 9 It's Kent. I'm thinking he's calling  
 10 to tell me about the motion to appeal  
 11 the ruling about Alan's former status.  
 12 Mr. Jensen never asked to get special  
 13 permission to appeal that ruling as I  
 14 had asked him to. Failure number one.  
 15 While speaking to answer the him  
 16 on the phone it was about 3:30 pm. He  
 17 told me the purpose of his call was to in-  
 18 form me that by law, it is his duty to  
 19 relay the prosecutions plea bargain to me. I'm  
 20 in shock. I ask him what agreement with the  
 21 State will drop the prosecution  
 22 after status change for a plea of guilty  
 23 to the battery. I tell him I was never  
 24 charged with that. He says he's the  
 25 and they say I must have been

5

1 it in the back of my life and just forget  
2 all about it. I fail to find the same  
3 humor that Mr. Jensen was experiencing  
4 that day for a charge of that mag-  
5 nitude and severe penal incarceration  
6 time. I find it hard to believe that  
7 anybody in the professional position that  
8 Kent Jensen embodies to place a client  
9 in that sort of jeopardy by failing to  
10 inform me of such an existence of  
11 such a charge was to say the least  
12 heart stopping.

13 Kent Jensen went on to humor me  
14 a little more by also informing me that Jury  
15 trial was at 9:00 the following morning. I  
16 tell him, postpone it. I'll waive my Right  
17 to a speedy trial. Mr. Jensen must have been  
18 in a very good mood, because he's chuckling  
19 once again, and says, I wish I would have  
20 known that Friday. I tell him, only I  
21 am not laughing at this dire circumstance  
22 as Mr. Jensen is. I tell him that, yeah  
23 I wish I had known about the persistent  
24 charge on Friday too.

25 I asked Mr. Jensen if he had

6

1 ever had that ruling appealed. No he says  
2 I forget all About it. I'm thinking  
3 to my self, how can a man simply forget  
4 to inform a Client that has just  
5 been charged with a Charge that  
6 has a potential life sentence. I  
7 ask him if its legal. How can they  
8 do this. He say they amend a charge at  
9 anytime. Is there anything we can do?  
10 No, No there isnt. Failure number two.

11 I ask him to get the trial post-  
12 poned. He's saying it wont happen. But  
13 you expect me to go to trial. Well you  
14 can plead guilty. Oh they'll stop a  
15 jury trial for a guilty plea, but for  
16 what mr Jensen did.

17 I tell him to file 3 motions.  
18 One that I waive my Right to a so-  
19 erdy trial, two, dismiss the persis-  
20 tent violator, and three, disqualify  
21 the judge because hes acquainted  
22 to Alvin Everett.

23 Then I ask him whats my  
24 chances. Whats our defense. Mr  
25 Everett should never have been

1 Allowed to remain in general pop-  
 2 ulation. Because of his former stat-  
 3 us Dennis Dexter should have had him  
 4 isolated from other inmates. Jensen  
 5 then listened to me tell him how  
 6 the department of Corrections will  
 7 sometime against the will of a  
 8 certain class of inmates they do and  
 9 have an obligation to protect an in-  
 10 mate from institutional harm. This  
 11 was not done, in Alan's case. Alan was  
 12 allowed to be general population be-  
 13 cause I don't know why. I asked  
 14 Mr. Jensen to look into that. Again he  
 15 told me I will. Failure number three.

16 Next morning, we are summoned to  
 17 the the Judges Chambers to have two,  
 18 not three, motions to be heard. I'm  
 19 there with Jensen. He must still be  
 20 in a happy mood cause he's even cheer-  
 21 ful to the judge on the bench,  
 22 saying the judge is honor it's all my  
 23 fault your honor. I must have stuck  
 24 it in the back of my mind. Jensen says.  
 25 His Honor failed not dismiss the



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For 3-4 minutes. Motion denied.  
 Jensen (sic) have objected, fail  
 number four  
 motion to Deny is over  
 Denied. Jensen's objection  
 number five.  
 Didn't even file a motion about  
 the Right to waive speedy trial.  
 number six.  
 Jury first starts. Jury selection.  
 By the court. It's Jensen's ask  
 now out of all for them to ask me what  
 think. Now's not asking me what I want  
 him to do. I'm not asking him what I want  
 am scared. I tell him I can't hear, you  
 problem I just want it over. Then  
 the jury picked. The jury consists  
 of the jury. He hears the facts as  
 read by the jury. But Jensen  
 is that I don't know about the  
 rights of Jensen or anything  
 the jury rests. I don't know  
 the jury. I don't know anything  
 to Jensen or anything about it.

1 is on a document. Now I know  
 2 the judge Jensen has asked questions  
 3 for him a break. Out of the pro-  
 4 cess of the judge in common processes &  
 5 documents, does not give us prior notice  
 6 to this. Court rules for the state. He  
 7 never ruled once for the defendant. I  
 8 don't believe that this Judge will rule  
 9 one time in my behalf because by His  
 10 Honor is biased and prejudiced to  
 11 the defendant because of the  
 12 crime against His Honor Association  
 13 to the victim. During questioning of  
 14 state attorney to defendant he  
 15 asked defendant to read said  
 16 document. I asked why attorney  
 17 they aren't you going to object. He  
 18 shakes his head no. I turn  
 19 and face His Honor and ask  
 20 His Honor, can't I object to this.  
 21 didn't you just say that the  
 22 state couldn't show this docu-  
 23 ment? His Honor didn't answer  
 24 me. He only shook his head  
 25 no. In fact, saying a

1 his hands are bound. I look better  
 2 to my attorney, I want to see what  
 3 you have to say. He never  
 4 says anything either. Failure number  
 5 seven.

6 This clearly prejudiced the  
 7 jury secure guilt of defendant. The  
 8 shaking of His Honors head, and  
 9 that of my attorney condemned me.  
 10 My attorney rests.

11 I walk home approximately 30  
 12 minutes later my Rosa answers the  
 13 phone Kent says the jury's back. I  
 14 know what that means. I tell my  
 15 Rosa. That's it I'm guilty. I go to  
 16 court. Shake Mr Pannons hand, I know  
 17 he's won. I tell him no hard feelings.  
 18 Jury comes in. Guilty. The jury is  
 19 not polled. I didn't see the need.  
 20 I asked Mr Janson, he said that  
 21 they would all just say they voted  
 22 for a guilty verdict. so I said  
 23 it's ok then. Then the jury was  
 24 informed of my persistent  
 25 later charges. My lawyer said

1. Larsen told me that all the jury had  
 2. to do was look at my felonies to find  
 3. me guilty. I ask him you mean all  
 4. they have to do is look at them and  
 5. that's it. Yes, he says. I tell him it's  
 6. ok, send them home. I knew they were  
 7. fixed. I was too. His Honor released  
 8. the jury. My Attorney told me to go  
 9. ahead and plead guilty knowing that  
 10. I would place myself in grave danger. No  
 11. body told me about the Sixth Amendment

# Supreme Court strikes down California sentencing law

WASHINGTON (AP) — The Supreme Court struck down California's sentencing law Monday, a decision that could mean shorter sentences for thousands of state prisoners.

The 6-3 ruling in *Cunningham v. California* effectively shaves four years off the 16-year sentence of former police officer John Cunningham, who was convicted of sexually abusing his son.

It's the latest in a series of high court rulings over the past seven years that limit judges' discretion in sentencing defendants. The court has held repeatedly that a judge may not increase a defendant's sentence based on factors that go beyond what is determined by a jury.

The court has repeatedly held that under the Sixth Amendment, any fact that exposes a defendant to a greater

potential sentence must be found by the jury, not a judge, and established beyond a reasonable doubt, not merely by a preponderance of the evidence." Justice Ruth Bader Ginsburg wrote for the court.

Several states have changed their sentencing laws to require prosecutors to prove to a jury aggravating factors that could lead to longer sentences.

California had argued that a 2005 state Supreme Court decision, interpreting the state's Determinate Sentencing Law effectively brought the state into compliance with the U.S. high court's rulings. The law instructs judges to sentence inmates to the middle of three options, unless factors exist that justify the shorter or longer prison term.

The state warned that its criminal

justice system would be burdened by having to re-sentence thousands of inmates.

Rather than prescribing a way to fix the law, Ginsburg said, "The ball lies in California's court."

Justice Samuel Alito said in dissent that California's law "is indistinguishable in any constitutionally significant respect" from the federal sentencing guidelines that have been approved by the Supreme Court.

There were just under a quarter-million felony convictions in the state in 2005. Data from the 1980s cited by the California Supreme Court suggests that roughly 15 percent of cases involving just one felony count result in sentences in which a judge, not jury, finds an aggravating factor to justify the additional punishment.

1 Trial Court erred in allowing in  
2 allowing Judge to make a decision  
3 by only pondering the evidence. It  
4 also erred by not allowing the  
5 jury to find defendant guilty. Court  
6 also erred by not requiring State  
7 Prosecutor to Argue the Evidence to  
8 the jury. In effect trial court is  
9 in error by not enforcing proper pro-  
10 cedure in trial proceedings.

11 Also Trial court can rule on this  
12 before and have a chance at imposi-  
13 ing correct sentence before de-  
14 fendant is forced to appeal agai-  
15 nst trial courts decision.

16 It is not defendants inte-  
17 ntion to try and interpret the Law to  
18 this Honorable Judge, who clearly  
19 knows that it knows the law. I  
20 am only trying to defend myself  
21 with limited reading and self st-  
22 udy by law books at the County  
23 Jail.

24 Upon Conviction Kent Jensen  
25 failed to keep defendant free.

1 on bail pending Judgement of  
 2 Conviction by failing to motion  
 3 the Court and give proper and  
 4 prior notice by filing to the  
 5 US Court OF APPEALS FOR THE NINTH  
 6 CIRCUIT, Rule 9-1.1. Release Be  
 7 fore Judgement of Conviction. Also he  
 8 could have filed motion on Rule  
 9 9-1.2. Release Pending Appeal with  
 10 the same Court. According to  
 11 Rule 9-1.2.(e) states, If the  
 12 Appellant is on bail at the time the  
 13 motion is filed in this Court, that  
 14 bail will remain in effect until the  
 15 Court rules on the motion (Rev. 01/-  
 16 2001)  
 17 As defendant has stated, I  
 18 am not a lawyer. But if these  
 19 rules or rights apply to me then  
 20 why didn't Counsel do this for  
 21 me. Failure number eight.  
 22 Counsel didn't protect -  
 23 with defendants due process under  
 24 Rules of evidence Rule 609 (b) <sup>51b</sup> Sect  
 25 time limit to enter evidence was

1 inadmissible, by being over ten  
2 years old. Failure number nine.  
3 Counsel motioned for Court  
4 to have psychological evaluation  
5 done to defendant. This is the  
6 biggest mistake done to this  
7 defendant. Counsel advised his  
8 client to be honest with ex-  
9aminer. By doing this the Dr.  
10 of said examination has did  
11 this defendant irreversible harm.  
12 Defendant is not a Psycho-  
13 path as evidently stated by the  
14 remarks of the examiner. I  
15 may be a lot of things but I'm  
16 not psychotic. Defendant was  
17 made to believe that the Dr  
18 was being sympathetic to him  
19 but was only being coerced in-  
20 to acting in a manner favorable  
21 to a very improper diagnosis of  
22 the defendant. If all evidence  
23 is read carefully by defendants  
24 own hand then clearly the ev-  
25 idence will tilt in the favor

1 at the time out to Court that  
2 Report of Dr. [unclear]  
3 [unclear]

4 Counsel for the defendant  
5 was ineffective to protect him  
6 from this Dr by his own  
7 word to defendant stated he  
8 was friend with Alan Garrett  
9 this prejudiced the Dr and  
10 now defend is made to suffer  
11 for the friendship of the Dr.  
12 When the defend asked Counsel  
13 to bring Dr to the stand he  
14 said ~~he~~ didn't want to do that.  
15 Failure number 11.

16 It should be apparent  
17 by this affidavit to show  
18 cause is sufficient to reason  
19 that Counsel was ineffective. But  
20 Counsel further violated the Att-  
21 orney/client confidentiality privilege  
22 by coming to the jail, to inmates  
23 well dated and discussing his  
24 case in front of other inmates  
25 and in public areas. Failure nu-



16

number twelve.

2 The defendant brought all this  
3 to Counsel's Attention. Counsel said  
4 if I had lost confidence in him he  
5 would move the court to let him  
6 go. Failure number thirteen.

7 By Counsel own mouth he  
8 stated that he works 10 hour days  
9 he stressed out and tired and he  
10 didn't think he could devote his  
11 proper time to represent me. I  
12 have to say. Failure number fourteen.

13 This defendant believes that  
14 Counsel is more than adequate to de-  
15 fend a case such as his. But for  
16 some reason Counsel chose not to  
17 defend this defendant properly  
18 because Alan Barrett is also a  
19 friend to the defendant's own  
20 Counsel.

21 Alan Barrett was an -  
22 E.M.T. for approx. 11 to 12 years. He  
23 was a Bailiff for over 10. He was  
24 and is known in the community  
25 by many many people. Alan

1 still to this day has immediate  
 2 family working for the Courthouse  
 3 and also the police Dept. TO Whit:  
 4 A brother. Gail Garrett. Jury me-  
 5 mbers knew him. The Judge  
 6 knew him, the prosecutor  
 7 knew him. I'm sure he's a  
 8 nice guy. But by all these  
 9 reasons Council should have  
 10 asked for a change of venue.  
 11 And upon these facts, defend-  
 12 ant should have been granted,  
 13 a change of venue. Failure  
 14 number fifteen  
 15 This defendant by no means  
 16 is claiming to know the law or is  
 17 he claiming everything he has el-  
 18 aborated on is kind of true  
 19 facts written in stone. But  
 20 he did read law pretending to  
 21 over 70% percent of what he's  
 22 claiming. If defendant just  
 23 read about this in only 2 short  
 24 months to come up with this  
 25 defense that now he is claim-

1 ming he should have been entitled  
 2 led to, how can any Court in the land  
 3 claim that defendant should have  
 4 objected. Defendant should have  
 5 noticed. Defendant should  
 6 have known better. If this  
 7 Honorable Court, that this de-  
 8 fendant truly has only the deep-  
 9 est respects for, believe that  
 10 I should have did the defend-  
 11 ing for my case, then why did  
 12 it appoint me a lawyer that  
 13 was over burdened and still is  
 14 over burdened, didn't know enough  
 15 in the Law to properly defend this  
 16 defendant, and put his life on  
 17 the chopping block. IF this  
 18 Court believes or believed that  
 19 I could or its my responsibility  
 20 to defend my self to the fullest  
 21 extent of the Law then why  
 22 my Good ~~God~~ in heaven said by  
 23 His Name did they appoint me  
 24 to ultimately ~~defend~~ me, and  
 25 my ~~freedom~~, in this Honorable

1 Court of Judge John McLean  
2 and Cassia County. Failure nu-  
3 mber sixteen.

4 Your Honor Sir, it is by  
5 no means my intent to imply  
6 or to state that this Court  
7 is evil. But I do believe that  
8 I am being biased, prejudiced  
9 ineffectively represented and  
10 have been intentionally allowed  
11 to be convicted by a Jury that  
12 loved Alan Garrett, Prosecuted  
13 by a man that loved Alan Garrett,  
14 tried in front of a Court where  
15 Alan once worked in, and by  
16 a Judge that knew Alan Garrett,  
17 defended by a man that liked  
18 Alan Garrett, Diagnosed by a  
19 man that loved Alan Garrett, and  
20 now will be sentenced to go be  
21 with Alan Garrett who now resides  
22 in the Department of corrections  
23 himself, a man guilty by his  
24 own hand. Failure number  
25 seven from.

1 All I'm asking is for this  
2 Court to treat me fairly.  
3 Give me a lawyer that's going  
4 to work in my case. One that's  
5 not going to make me defend  
6 myself.

7 Give me a New trial that  
8 the merits hold in my favor. Let  
9 the trial be in a different  
10 part of the state where no  
11 body knows Alan Garrette or  
12 me.

13 If this Court believes  
14 in Due process and fair treat-  
15 ment for all mankind then let  
16 it put aside the guilty verdict  
17 handed down by a biased and  
18 prejudiced jury. I have to be-  
19 lieve what this defendant states  
20 is not true. Grant this defendant  
21 A New Trial.

22 With my Deepest and most  
23 Sincere Respect. I apologize for  
24 any misinterpretation of my intent  
25 my Respects to this honorable Court.

21

1 I am sorry I failed to bring  
2 to the the Attention of the  
3 Court that the Stat cannot file  
4 the amended Charge of perjury  
5 violator because Rule 7. I.D.R.

6  
7 Rule 7. (c) Amendment of  
8 Information or indictment. The Court  
9 may permit a complaint, an information or  
10 indictment to be amended at any time before  
11 prosecution rests if no additional or  
12 different offense is charged and if  
13 substantial rights of the defendant are  
14 not prejudiced.

15 Failure eighteen.

16 All of which is contrary to  
17 the form, force and effect of  
18 the statutes in such case made and  
19 provided and against the peace and  
20 dignity of the State of Idaho.

21  
22 Valentin Thuermer  
23 pro se.  
24 (for now)  
25

P. 22

State of Idaho

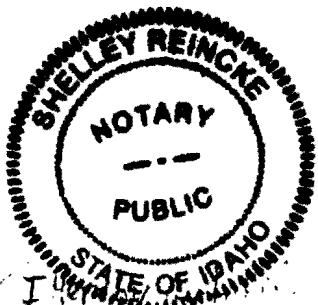
County of Cassia

Voluntary Affidavit Subscribed and sworn to that the facts stated  
in this Affidavit are true and correct as of the date hereof.

Dated this 14<sup>th</sup> day of April 2007

Alberto Herrera  
Defendant

Subscribed and sworn to before me this 14<sup>th</sup> day of April 2007



Shelley Reingke  
Notary Public for Idaho  
Commission Expires Sept 23, 2011

Certificate of Service

I certify that on the 14 day of April 2007

- (mailed) true and correct copies of the motions here with 22 pages
- ✓ (hand delivered) to Clerk of the District Court
- courthouse box Judge John Muebeanson
- via U.S. mail system to Blain Cannon
- Kent Jensen

Alberto Herrera  
Defendant

ORIGINAL

DISTRICT COURT  
CASSIA COUNTY ID

Kent D. Jensen ISB #4424  
2042 Overland  
P.O. Box 276  
Burley, Idaho 83318  
Telephone: 208-878-3366  
Fax: 208-878-3368

FILED

2007 MAY -1 P 3:09

L. J. NICHOLSEN

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF CASSIA

STATE OF IDAHO,

Plaintiff,

v.

VALENTINO HERRERA,

Defendant.

Case No. CR 2006- 3507\*D

MOTION TO REVIEW SENTENCE PURSUANT  
TO IDAHO CRIMINAL RULE 35

COMES NOW, the defendant, by and through his attorney of record, Kent D. Jensen, and pursuant to Idaho Criminal Rule 35, who does hereby petition this court to review the sentence imposed by this court on April 16<sup>th</sup>, 2007. This sentence imposed by the court was unduly harsh. The Defendant further petitions **this court to set a time and place for hearing** on this matter, rather than exercising the court's discretion in considering this motion without additional testimony or oral argument.

DATED this 27<sup>th</sup> day of April, 2007.

Kent D. Jensen

MOTION TO REVIEW SENTENCE PURSUANT TO IDAHO CRIMINAL RULE 35



CERTIFICATE OF SERVICE

I hereby certify that on this 27<sup>th</sup> day of April, 2007, I served the foregoing document upon the interested parties by depositing copies thereof in the United States Mail, postage prepaid, addressed as follows:

Cassia County Prosecutor  
Cassia County Courthouse Box  
Burley, Idaho, 83318



Kent D. Jensen

DISTRICT COURT  
CASSIA COUNTY ID

FILED

2007 MAY -1 P 3:08

LARRY R. NICKELSEN

Kent D. Jensen (ISB #4424)  
2042 Overland  
P.O. Box 276  
Burley, Idaho 83318  
Telephone: (208) 878-3366  
Fax: (208) 878-3368

Attorney for: Valentino Herrera

IN THE DISTRICT COURT OF FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO IN AND FOR THE COUNTY OF CASSIA

STATE OF IDAHO,

Plaintiff,

vs.

VALENTINO HERRERA,

Defendant.

CASE NO. CR-2006-3507\*D

MOTION FOR ATTORNEY'S FEES

COMES NOW, the Defendant and respectfully petitions this Court for attorney's fees in the amount of \$174.90 as shown on Exhibit A. The Defendant is represented by a conflict of interest public defender, namely Kent D. Jensen.

DATED this 30<sup>th</sup> April, 2007

Kent D. Jensen

Kent D. Jensen  
2042 Overland  
P.O. Box 276  
Burley, ID 83318

Invoice submitted to:  
Valentino Herrera  
Cassia County PD

April 19, 2007

Invoice #17227

Professional Services

	<u>Hrs/Rate</u>	<u>Amount</u>
3/5/2007 Attend sentencing	0.75 55.00/hr	41.25
3/8/2007 Review report from Dr. Smith	0.50 55.00/hr	27.50
3/13/2007 Conference with client	0.25 55.00/hr	13.75
Review presentence report	0.50 55.00/hr	27.50
3/17/2007 Review correspondence from client	0.17 55.00/hr	9.35
3/21/2007 Conference with client	0.75 55.00/hr	41.25
Telephone conference with prosecutor	0.17 55.00/hr	9.35
3/22/2007 Prepare letter to client re: Notice of Hearing	0.09 55.00/hr	4.95
For professional services rendered	3.18	\$174.90
Previous balance		\$9.90

000057

Exhibit A

Valentino Herrera

Page 2

	<u>Amount</u>
Accounts receivable transactions	
2/16/2007 Credit	<u>(\$9.90)</u>
Total payments and adjustments	<u>(\$9.90)</u>
Balance due	<u><u>\$174.90</u></u>

000058

Exhibit A

FILED

2007 MAY -3 A 9:23

LEAH JENSEN

Kent D. Jensen ISB #4424  
2042 Overland  
P.O. Box 276  
Burley, Idaho 83318  
Telephone: 208-878-3366  
Fax: 208-878-3368

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF CASSIA

STATE OF IDAHO,

CASE NO. CR-2006-3507MD

Plaintiff,

ORDER FOR ATTORNEY'S FEES

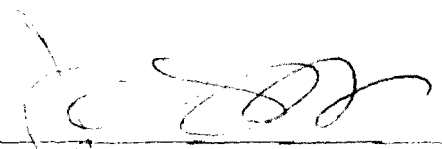
vs.

VALENTINO HERRERA

THE COURT being advised in law and the premises issues the following order:

IT IS HEREBY ORDERED that the court approves payment of attorney's fees. The attorney for the Defendant shall be paid \$174.90 as attorney's fees.

DATED this 2nd May, 2007

  
Honorable Judge

IN THE DISTRICT COURT  
OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

**CLERK'S CERTIFICATE OF MAILING**

I hereby certify that on the 4th day of May, 2007, I served a true and correct copy of the Order for Attorney's Fees to the parties indicated below.

Kent Jensen  
P.O. Box 276  
Burley, Idaho 83318

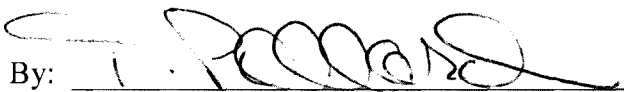
         U. S. Mail  
  X   Designated Box in Clerk's  
Office

Blaine Cannon  
Prosecuting Attorney's Office  
P.O. Box 7  
Burley, ID 83318

         U.S. Mail  
  X   Designated Box in Clerk's  
Office

Cassia County Auditor's Office

         U.S. Mail  
  X   Designated Box in Clerk's  
Office

By:   
Deputy Clerk

1 Kent D. Jensen ISB #4424  
2 2042 Overland  
3 P.O. Box 275  
4 Burley, Idaho 83318  
5 Telephone: 208-878-3366  
6 Fax: 208-878-3368

DISTRICT COURT  
CASSIA COUNTY ID  
FILED

2007 MAY -3 A 9 23

LARRY A. JENSEN

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF CASSIA

STATE OF IDAHO,

Plaintiff,

v.

VALENTINO HERRERA,

Defendant.

Case No. CR 2006- 3507\*D

ORDER APPOINTING A STATE APPELLATE  
PUBLIC DEFENDER

The court being advised in the law upon the Defendant's Motion to Appoint an Appellate  
Public Defender and for good cause shown issues the following order:

IT IS HEREBY ORDERED, that an Appellate Public Defender is hereby appointed for  
the appeal in this case.

DATED this 2nd day of May, 2007.

  
Honorable John Melanson

ORDER APPOINTING A STATE APPELLATE PUBLIC DEFENDER

000061

CLERK'S CERTIFICATE OF SERVICE

I hereby certify that on this 4 day of April, 2007, I served the foregoing document upon the interested parties by depositing copies by the following method:

Cassia County Prosecutor  
Cassia County Courthouse Box  
Burley, Idaho, 83318

Kent D. Jensen  
Cassia County Courthouse Box

Lawrence Wasden  
Attorney General of Idaho  
PO Box 83720  
Boise, ID 83720

Molly Huskey  
State Appellate Public Defender  
3647 Lake Harbor Lane  
Boise, ID 83703

  
Clerk

ORDER APPOINTING A STATE APPELLATE PUBLIC DEFENDER



FILED  
2007 May 30  
J 8 18  
BY A MICHELLE  
CLERK

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO  
IN AND FOR THE COUNTY OF CASSIA**

**DATE: May 30, 2007**

**TIME: 8:38 am**

**Judge John Melanson  
District Judge**

**Larry Mickelsen  
Clerk of Court**

**Linda Ledbeder  
Official Court Reporter**

**Tara Gunderson  
Deputy Clerk**

**DISTRICT COURT MINUTES**

**CR 06-3507 D**

**Motion for Restitution**

**State of Idaho**

**Blaine Cannon**

**Vs.**

**Valentino Herrera**

**Kent Jensen**

**VALENTINO HERRERA**  
**CR 06-3507 D**

*Motion for Restitution*

Date: Wednesday, May 30, 2007  
Time: 8:38 a.m.

Court reviews case file and the Motion for Restitution, pro se Motion for ineffective Counsel and a Motion for Correction of sentence. Doug Abenroth is present on behalf of the State of Idaho. Kent Jensen is present on behalf of the defendant.

Kent Jensen moves to withdraw as Counsel of record; cites considerations.

The Court will allow Counsel to withdraw and will appoint new Counsel to take over the Rule 35 Motion and the Motion for Restitution.

Kent Jensen to prepare order.


Hearing Concludes: 8:41 a.m.



# CERTIFICATE OF MAILING

I hereby certify that on this 30 day of May, 2007 I caused to be served a true and correct copy of the foregoing document, by the method indicated below, and addressed to the following:

1. Blaine Cannon                        X   Courthouse Box  
P.O. Box 7  
Burley, ID 83318
2. Kent Jensen                          X   Courthouse Box  
P.O. Box 276  
Burley, ID 83318
3. Clayne Zollinger                    X   Courthouse Box  
P.O. Box 210  
Rupert, ID 83350

  
\_\_\_\_\_  
Tara Gunderson  
Deputy Clerk

Kent D. Jensen ISB #4424  
2042 Overland  
P.O. Box 276  
Burley, Idaho 83318  
Telephone: 208-878-3366  
Fax: 208-878-3368

2006-3 P 4 56

*[Handwritten signature]*

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF CASSIA

STATE OF IDAHO,

Plaintiff,

vs.

VALENTINO HERRERA

CASE NO. CR- 2006-3507

MOTION FOR ATTORNEY'S FEES

COMES NOW Kent D. Jensen, who is the attorney of record for the Defendant and respectfully petitions this Court for attorney's fees in the amount of \$335.50 as shown on Exhibit A. The Defendant is represented by a conflict of interest public defender, namely Kent D. Jensen.

DATED this 17<sup>th</sup> June, 2007

*[Handwritten signature]*  
Kent D. Jensen

000067

Kent D. Jensen  
2042 Overland  
P.O. Box 276  
Burley, ID 83318

Invoice submitted to:  
Valentino Herrera  
Cassia County PD

June 07, 2007

Invoice #17474

Professional Services

	<u>Hrs/Rate</u>	<u>Amount</u>
4/9/2007 Conference with client	1.00 55.00/hr	55.00
4/11/2007 Research and draft motions	1.00 55.00/hr	55.00
4/13/2007 Conference with client	0.75 55.00/hr	41.25
4/16/2007 Court Appearance for Hearing	1.00 55.00/hr	55.00
4/11/2007 Prepare motions	0.50 55.00/hr	27.50
4/27/2007 Prepare Notice of appeal, Motion for appellate PD	1.50 55.00/hr	82.50
4/19/2007 Prepare letter to client re: hearing	0.09 55.00/hr	4.95
5/15/2007 Prepare letter to client re: notice of hearing	0.09 55.00/hr	4.95
5/4/2007 Review correspondence from client	0.17 55.00/hr	9.35
For professional services rendered	6.10	\$335.50
Previous balance		\$174.90

000068

Exhibit A

Valentino Herrera

Page 2

	<u>Amount</u>
Accounts receivable transactions	
6/6/2007 Credit	<u>(\$174.90)</u>
Total payments and adjustments	<u>(\$174.90)</u>
Balance due	<u><u>\$335.50</u></u>

000069

Exhibit A

1 Kent D. Jensen ISB #4424  
2 2042 Overland  
3 P.O. Box 276  
4 Burley, Idaho 83318  
5 Telephone: 208-878-3366  
6 Fax: 208-878-3368

DISTRICT COURT  
CASSIA COUNTY ID

FILED

2007 JUN 13 A 9 00

LARRY A. NICKELSEN

BY   
~~DEPUTY DISTRICT~~

7 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
8 OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF CASSIA

9 STATE OF IDAHO,

10 Plaintiff,

11 vs.

12 VALENTINO HERRERA

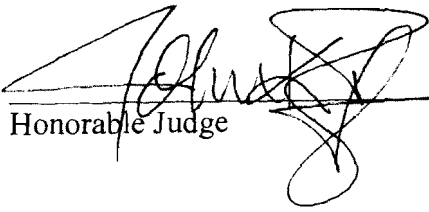
CASE No. CR-2006-3507

ORDER FOR ATTORNEY'S FEES

13 THE COURT being advised in law and the premises issues the following order:

14 IT IS HEREBY ORDERED that the court approves payment of attorney's fees. The  
15 attorney for the Defendant shall be paid \$335.50 as attorney's fees.

16  
17 DATED this 12 June, 2007

18  
19  
20   
21 Honorable Judge

22  
23  
24  
25 CC / Kent Jensen  
T.P. Blaine Cannon  
Auditor

000070



ORIGINAL

DISTRICT COURT  
CASSIA COUNTY ID

FILED \_\_\_\_\_

Inmate name VALENTINO HERRERA

IDOC No. \_\_\_\_\_

Address IMSI A-1-32 B

PO Box 51 Boise, IDAHO  
83707

Defendant PRO SE

2007 JUN 13 A 9 32

LARRY A MICKELSEN

BY [Signature]  
DEPUTY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

STATE OF IDAHO,

Plaintiff,

vs.

VALENTINO HERRERA,

Defendant.

Case No. CR 2006-3507 \*D

AMENDED SUPPLEMENTAL  
MOTION FOR  
CORRECTION OR  
REDUCTION OF  
SENTENCE, ICR 35  
AND MEMORANDUM  
IN SUPPORT

COMES NOW, VALENTINO HERRERA, Defendant in the instant action, and pursuant  
to Idaho Criminal Rule 35, moves this Honorable Court for its Order:

☒ Correcting the Defendant's illegal sentence, or

☒ Reducing Defendant's sentence for the reasons stated on page 11-13 of this motion:

1. The Defendant was convicted of BATTERY ON OFFICER  
PERSISTENT VIOLATOR before the Honorable  
Judge JOHN MELANSON and sentenced to a term of imprisonment in  
the custody of the Idaho Department of Correction for:

☒ a unified term of 25 years including 5 years fixed followed by 20 years  
indeterminate, (APPENDIX E).

☐ a fixed term of \_\_\_\_\_ years.

2. The Defendant has been incarcerated since JUNE 4, 2006 and has served  
11 3/4 mo. (months/years) of the sentence.

MOTION FOR REDUCTION OR CORRECTION OF SENTENCE, ICR 35 - 1

Revised: 10/06/05

000071

3. The Defendant believes:

- ☒ The Court should reconsider its earlier sentence and reduce the same on the following grounds, or, *MOTION FILED BY COUNSEL ON APR. 27, 2007 FOR HENRY. DEFENDANT REQUEST THE FOLLOWING BE HEARD*
- ☒ The sentence is illegal and should be changed on the following grounds:

(State the reasons why you believe your sentence should be reduced. You may add extra pages if necessary. Any additional documentation must be attached hereto.)

*DEFENDANT STATES THAT IN PART II OF THE JUDGEMENT OF CONVICTION, ORDER OF COMMITMENT AT PAGE TWO HE WAS SENTENCED TO A ADDITIONAL (20) YEARS INDETERMINATE TO A UNDERLYING (5) YEARS FIXED SENTENCE FOR BATTERY ON A OFFICER I.C. 55-18-915(d) PURSUANT TO THE PERSISTANT VIOLATOR STATUTE I.C. 5 19-2514 WHICH DEFENDANT CLAIMS IS ILLEGAL FOR THE FOLLOWING REASONS SET MORE FULLY BELOW;*

### *ARGUMENT FOR ILLEGAL SENTENCE*

*A.*

*Idaho Code section 19-2514 provides:*

*" ANY PERSON CONVICTED FOR A THIRD TIME OF A COMMISSION OF A FELONY, WHETHER*

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THE PREVIOUS CONVICTIONS WERE WITHIN THE  
THE STATE OF IDAHO OR WERE HAD OUTSIDE  
THE STATE OF IDAHO, SHALL BE CONSIDERED A  
PERSISTENT VIOLATOR OF LAW, AND ON SUCH  
A THIRD CONVICTION SHALL BE SENTENCED TO  
A TERM IN CUSTODY OF THE STATE BOARD OF  
CORRECTION WHICH TERM SHALL BE FOR NOT  
LESS THAN (5) YEARS AND SAID TERM MAY  
EXTEND TO LIFE."

DEFENDANT ARGUES THAT THE PRINCIPLE OF LENITY  
MANDATES CRIMINAL STATUTES BE READ NARROWLY,  
AND WHERE AMBIGUITY EXISTS, IN A MANNER THAT  
PROVIDES LENIENCY TOWARD DEFENDANTS. STATE V  
ALAB, 112 IDAHO 1139, 1141 (1987) STATE V HARRINGTON  
1999 IDA. APP LEXIS 87 (CT. APP. 1999).

IN HARRINGTON SUPRA, THE COURT HELD THAT  
THIS PRINCIPLE DICTATES A READING OF I.C. §  
-19-2514, THAT ALLOWS A COURT TO SUSPEND A  
SENTENCE IMPOSED, NOT A INTERPRETATION.  
-THAT FINDS A MANDATORY FIVE YEAR PENITEN-  
-TIARY TERM DECREED WITHIN. FOOT NOTE # 5

DEFENDANT ARGUES THAT THE SAME PRINCIPLE OF  
LENIENCY IN READING I.C. § 19-2514, DICTATES THAT  
ANY CONVICTION WHICH HAS BEEN EXPUNGED, OR  
SET ASIDE OR FOR WHICH A PERSON HAS BEEN  
PARDONED OR HAS HAD HIS CIVIL RIGHTS RESTORED  
SHALL NOT BE CONSIDERED A CONVICTION FOR  
PURPOSE OF A PERSISTENT VIOLATOR UNDER  
IDAHO CODE § 19-2514.

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IN CUSTIS V U.S. 114 S.Ct 1732, 1736 (1994) (when attacked with a similar argument) stated.

"Congress passage of other related statutes that expressly permit repeat offenders to challenge prior convictions that are used for enhancement purposes support this negative implication"

The court pointed to 21 USC § 851(c) shows that when Congress intended to authorize collateral attacks on prior convictions at the time of sentencing, it knew how to do so.

IN THE SAME MANNER IDAHO'S LEGISLATURE HAVE PROVIDED IDAHO CRIMINAL Rule (35) to challenge a excessive sentence within (120) days or a illegal sentence at ANY TIME Defendant is requesting review under both STANDARDS.

B. IN THE present case Defendants prior conviction FOR AGGRAVATED DRIVING WHILE UNDER THE INFLUENCE. WHICH WAS COMMITTED ON NOVEMBER 21, 1988. A SENTENCED TO NOT LESS THAN ONE (1) NOR MORE THAN (3) YEARS. WAS DISCHARGED BY THE BOARD OF CORRECTION ON MAY 17, 1992. (SEE APPENDIX A).

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Defendant states that the 1988 Conviction was used as one of the three prior convictions NECESSARY For a persistent violator ENHANCEMENT under § 19-2514, IS THE CONVICTION BEING CHALLENGED IN THIS MOTION For The Following reasons below.

C. Pursuant to ARTICAL VI § 3 of Idaho Constitution it states in part:

"No person is permitted to Vote, serve as A Juror, or hold ANY ~~CIVIL~~ OFFICE who has, at any place BEEN CONVICTED OF A FELONY, AND who has NOT BEEN RESTORED to CIVIL RIGHTS OF CITIZENSHIP, or who, at the Time of Such Election, IS CONFINED IN PRISON ON CONVICTION OF CRIMINAL OFFENSE" (APPENDIX B)

In the present case Defendant was SENTENCED ON The challenged Conviction NOVEMBER 21, 1988. (APPENDIX A). wherefore he argues that The LAW at That Time concerning Restoration of civil rights is controlling.

Idaho Code § 18-310, in 1988 Automatically RESTORED A CONVICTED FELON'S CIVIL RIGHTS. WITHOUT The convict TAKING AFFIRMATIVE ACTION or WAITING A PERIOD OF (5) years before Application to The Idaho PARDON'S Board For Restoration which is currently The LAW AS AMENDED in 1992.

IN GOMES v UNITED STATES, 911, F.2D 219 (9th Cir 1990). (The court held that the restrictions of Rules of Evidence, Rule 609 Criminal Rules 32(b)(2), and 46(A)(7) and § 19-2514 on convicted Felons upon Final Discharge, and Attendant provisions of I.C. 18-310, giving a discharged Felon the right to vote and sub section (2)(d) of § 2-209 giving discharged Felons the right to SERVE ON A JURY, The right to CARRY FIREARMS do not overcome the Broad EFFECTS of Sub section (2) of § I.C. 18-310). (APPENDIX B), (APPENDIX C)

THE SIGNIFICANTS OF GOMEZ SUPRA, WAS THAT SINCE IDAHO RESTORED GOMEZ CIVIL RIGHTS HE COULD NOT BE CONVICTED OF A FEDERAL CHARGE OF HAVING A FIREARM. THIS IS BASED ON THE FACT THAT THE U.S. SUPREME COURT HAS HELD THAT PARDONS, EXPUNGEMENTS, SET ASIDES AND CIVIL RIGHTS RESTORATION COUNSELS A INTER-pretation THAT THEY ALL POSSESS THE SAME ATTRIBUTES AND DID NOT COUNT AS A FELONY CONVICTION. THE COURT WENT ON TO STATE THAT "FEDERAL LAW RATHER THAN STATE LAW CONTROLS THE DEFINITION WHAT CONSTITUTES A CONVICTION". SEE: BEECHAM v US, 114 S. Ct. 1669, 71-72 (1994). DICKERSON v NEW BANNER INST.

Inc., 103 S.Ct. 986 (1983).

IN BATES V MURPHY, 118 Idaho 239, 242 (1990) (THE IDAHO SUPREME COURT DISTINGUISHED THE DIFFERENCE BETWEEN COMMUTATIONS AND PARDONS FROM PAROLE. IN ADDRESSING PARDONS IT STATED

" A PARDON DOES AWAY WITH BOTH THE PUNISHMENT AND THE EFFECTS OF THE FINDING OF GUILT." CITING STANDLEE V STATE, 96 IDAHO 849 (1975)

DEFENDANT ARGUES THAT UNDER THE DEFINITION OF THE FORGOING " CHOICE-OF-LAW CLAUSE ANY CONVICTION WHICH HAS BEEN EXPUNGED, OR SET ASIDE OR FOR WHICH A PERSON HAS BEEN PAROLED OR HAS HAD CIVIL RIGHTS RESTORED SHALL NOT BE CONSIDERED A CONVICTION..." Id (THE EXEMPTION CLAUSE).

THAT LENIENCY DICTATES THAT HIS CIVIL RIGHTS RESTORATION (PRIOR TO THIS CONVICTION FOR BATTERY ON A OFFICER) IS EQUAL TO THE DEFINITION OF A PARDON AS ANNOUNCED IN BATES SUPRA AND SHOULD NOT BE USED AS A CONVICTION PURSUANT TO THE PRESENT VIOLATOR STATUTE §19-2514 IDAHO CODE,

IN A FEW JURISDICTIONS THE VIEW  
IS TAKEN THAT A PARDORED CONVICTION  
CANNOT BE USED AS A BASIS FOR  
INCREASING THE PUNISHMENT OF A SECOND  
OR SUBSEQUENT OFFENDER.

INDIANA - Kelly v State, 204 Ind 612, 185  
NE 453 (1933);

LOUISIANA - State v Lee, 171 LA 744, 132 So.  
219 (1931) State v Hardy, 174 LA 458, 141 So.  
27 (1932) State v Childers, 197 LA 715, 2  
So. 2d 189 (1941);

OHIO - State v Martin, 59 Ohio St 212, 52  
NE 188, 43 LRA 94, 69 AM ST REP 762  
(1898). State v Williams, 7 Ohio NP 562,  
5 Ohio DEC NP 545 (1897);

VIRGINIA - Edwards v Commonwealth,  
78 VA 39, 49 AM REP 377 (1883) ALSO SEE:  
31 ALR 2d 1189, 1190.

IN KEEPING WITH THE ARGUMENT OF LENITY  
AND AMBIGUITY OF I.C. § 19-2514. WHICH  
DOES NOT EXPRESSLY INCLUDE PARDORED  
CONVICTIONS AMONG THOSE THAT MAY BE  
PROVED UNDER THE PERSISTENT VIOLATOR  
STATUTE, AND THE IDAHO LEGISLATOR FAILURE TO  
EXPRESSLY INCLUDE PARDORED CONVICTIONS  
SHOULD BE CONSTRUED AS EVIDENCING ITS



Attention that ~~such~~ CONVICTIONS  
should not be counted (See Generally  
Kelly v STATE, 204 Ind. 612, 185 NE  
453, SUPRA (1933))

This is consistent with some case  
law. WERE the cases WERE REMANDED due  
to a CHALLENGE OF A UNDERLYING CONVICTION  
WHICH THE SENTENCING TRANSCRIPT WAS SILENT  
AS TO WHAT WEIGHT IF ANY, it gave the  
persistent violator finding. Also to the  
stigma of being a persistent violator, and  
its effects in the negative for parole  
consideration. STATE v CLARK, 132 Idaho  
337, 340-41 (Ct. App. 1998) STATE v  
BRANDT, 110 Idaho 341, 344 (Ct App. 1986),

The Defendant supports his argument that  
the Idaho Supreme Court held that a  
dismissal pursuant to I.C. § 19-2604  
Idaho's Expungement statute. That there  
was no longer a conviction to prevent  
the defendant from having VETERINARY  
LICENCE RESTORED. MANNERS v STATE Board  
of VET MEDICINE, 107 Idaho 950 (1985).

In EX PARTE MEDLEY, 73 Idaho 474,  
(1953) (THE Idaho Supreme Court noted  
that one of the salutary objectives of  
Idaho's EXPUNGEMENT statute is to create

AN INCENTIVE FOR REHABILITATION :

11 TO withhold Judgment after a plea of guilty protects the defendant at the time against the stigma of a conviction which may forever be recorded should the defendant conform to its terms and conditions. This creates, and rightfully so, a hope in the heart of the accused that he may ultimately be released under a order of probation without the stigma of a judgment of conviction. This is an incentive for complete rehabilitation and reform, one of the salutary objectives of the Act. 11

Defendant argues that I.C. § 18-310 prior to the 1992 Amendment gave the benefit of Restoration of all rights as if the conviction was expunged, pardoned, or set aside or final discharge pursuant to I.C. § 20-233 EXPIRATION OF MAXIMUM SENTENCE. HE argues that this was a legislated benefit which he should not be denied.

Defendant states that I.C. § 18-310 was amended in 1992 in which the convict has to Affirmatively apply after (5) years of good behavior. In which a determination would be made to restore those civil rights not restored upon discharge. Similar to EXPUNGEMENT, PARDON AND A SET ASIDE AS ARGUED HEREIN.

Defendant argues that the Conviction at ISSUE occurred in 1988 almost (60) year ago. That a Certificate was given in (1992) Four years later. That it has been (15) YEARS SINCE his Discharge of that CRIME of AGG. Driving under the influence of alcohol a ~~NON~~ Violent offense. (Appendix A)

Wherefore Defendant prays the Court to find that the forgoing crime, and conviction which is a NON-Violent crime in which Defendants Civil Rights were fully restored in (1992) cannot be used pursuant to IC, 19-2514, Because such a conviction is not Expressly included as a conviction in the Statute. Evidencing that such a conviction should not be counted, KELLY, SUPRA, AND 31 ALR 2d. 1189, 1190.

REQUEST for LENIENCY AND Reduction OF INDETERMINATE SENTENCE

D. Defendant prays that if The Court finds that the forgoing conviction can be counted and is not illegal, that the Court Take into consideration the Forgoing arguments for leniency.

Defendant states to the Court that his Civil Rights were restored to him in (1992)

and he went (4) years until Sentenced on his Second felony for Assault, and Battery on a officer CASE No. CR. 95-1430D (SEE APPENDIX D).

Defendant was discharged for the above Conviction CR. 95-1430D ON September 29, 2001. HOWEVER ON THIS CONVICTION HIS CIVIL RIGHTS WERE NOT FULLY RESTORED AS THE 1988 Conviction, because The Crime Was Committed after The 1992 AMENDMENT OF IC § 18-310. In which the Convict must wait (5) years after discharge and then make a Application (similar to a Application for a Pardon) TO THE Idaho Commission For Pardons and Parole (See: Appendix D).

Defendant States that HE would have been Eligible for Restoration of his full Civil Rights ON September 29, 2006. Which is (5) years from the date of discharge. (See: Appendix D), AND Idaho Code § 18-310.

Defendant was arrested on JUNE 4, 2006, Approximately (3) months before the (5) year waiting period was to EXPIRE. Although Defendant admits that Conviction OF CR 95-1430D can be used to Count under The persistent Violator Statute. HE requests The Court TO TAKE INTO CONSIDERATION that

He was (3) months shy of what the legislature deemed appropriate in showing rehabilitation for the purpose of Fully Restoring Civil Rights to Convicts. Including carrying firearms §16-310 Idaho Code.

That He respectfully asks the Court to take this New and additional information in Consideration as it does in a MANNER show his conformance against the standards set by The Idaho legislator to be ~~And~~ civil Rights restoration, Expungment which all have the same attributes as argued Here in.

### E. PRAYER FOR RELIEF

#1. Find that Defendants 1988 Conviction for Aggravated DUI CANNOT COUNT AS A CONVICTION pursuant to I.C. § 19-2514, For the Reasons set HEREIN.

#2. FIND THAT THE (20) YEAR SENTENCE ENHANCEMENT FOR PERSISTANT VIOLATOR IS ILLEGAL, AND MUST BE DISMISSED FOR THE REASONS SET HEREIN.

#3, THAT IF THE COURT FINDS THAT HIS (20) Year SENTENCE ENHANCEMENT IS NOT ILLEGAL. THAT IT WILL TAKE INTO THE NEW AND ADDITIONAL INFORMATION INTO CONSIDERATION, AND REDUCE THE INDETERMINATE PORTION OF HIS SENTENCE.

#4, ANY AND ALL RELIEF DEEMED JUST AND PROPER UNDER THE PREMISE SET HEREIN.

Defendant additionally submits the following documentation for consideration:

SEE: Appendix 1's (A) thru (E) ATTACHED.

WHEREFORE, the Defendant, Valentino Herrera, respectfully prays

this Honorable Court to reduce or correct the sentence as follows:

SEE: PREVIOUS "PRAYER FOR RELIEF" page  
(13) OF this Motion. Defendant also requests  
The Forgoing be incorporated with the ICR or grant such  
35 MOTION Filed by Counsel Kent Jensen on 4/27/07  
other and further relief, as the Court deems appropriate.

Respectfully submitted this

7<sup>th</sup> day of June, 2007

Valentino Herrera  
Defendant Pro SE

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 8<sup>th</sup> day of June, 2007, I

delivered to prison authorities for the purpose of mailing a true and correct copy of the MOTION

FOR REDUCTION OF CORRECTION OF SENTENCE, ICR 35 via prison mail system for

processing to the U.S. mail system to: #(1) KENT JENSEN Public Defender  
P.O. Box 276 Burley, Idaho 83318

#(2) CASSIA County Prosecuting Attorney

CASSIA County Court House  
P.O. Box 7 Burley, Idaho 83318

Valentino Herrera  
Defendant Pro SE

COPY



CECIL D. ANDRUS  
GOVERNOR

# STATE OF IDAHO

Department of Correction  
Administrative Offices

RICHARD VERNON  
DIRECTOR

## DISCHARGE FROM THE IDAHO DEPARTMENT OF CORRECTION

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

WHEREAS, on the 21st day of November, 1988, VALENTINO ALEX HERRERA was sentenced in the District Court of the State of Idaho, in and for the County of Twin Falls to the custody of the Idaho Department of Correction for imprisonment for the crime of AGGRAVATED DRIVING WHILE UNDER THE INFLUENCE OF ALCOHOL; sentenced for a period not less than one (1) nor more than three (3) years and was received at said institution on the 17th day of January, 1988. WHEREAS, the said VALENTINO ALEX HERRERA has completed said term in accordance with the laws of the State of Idaho.

NOW THEREFORE, The State Board of Correction does hereby discharge the said VALENTINO ALEX HERRERA from said custody this 17th day of May, 1992.

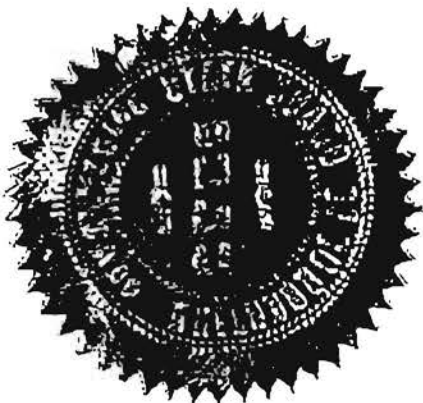
IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Seal of the Board of Correction done at Boise City, the capitol of Idaho, this 17th day of May in the year one thousand nine hundred and ninety-two.

A handwritten signature in cursive script, reading "R. D. Newberg", written over a horizontal line.

Ralph D. Newberg,

Records Manager

Idaho Department of Corrections



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COPY

ART VI  
§ 3

1

### § 3. Disqualification of certain persons.

No person is permitted to vote, serve as a juror, or hold any civil office who has, at any place, been convicted of a felony, and who has not been restored to the rights of citizenship, or who, at the time of such election, is confined in prison on conviction of a criminal offense.

**Compiler's notes.** As originally adopted, this section provided as follows:

"§ 3. No person is permitted to vote, serve as a juror or hold any civil office who is under guardianship, idiotic or insane, or who has, at any place, been convicted of treason, felony, embezzlement of the public funds, bartering or selling, or offering to barter or sell his vote, or purchasing or offering to purchase the vote of another, or other infamous crime, and who has not been restored to the rights of citizenship, or who, at the time of such election, is confined in prison on conviction of a criminal offense, or who is a bigamist or polygamist, or is living in what is known as patriarchal, plural or celestial marriage, or in violation of any law of this state, or of the United States, forbidding any such crime; or who, in any manner, teaches, advises, counsels, aids, or encourages any person to enter into bigamy, polygamy, or such patriarchal, plural, or celestial marriage, or to live in violation of any such law, or to commit any such crime; or who is a member of, or contributes to the support, aid or encouragement of, any order, organization, association, corporation, or society which teaches, advises, counsels, encourages, or aids any person to enter into bigamy, polygamy or such patriarchal or plural marriage, or which teaches or advises that the laws of this state prescribing rules of civil conduct, are not the supreme law of the state; nor shall Chinese, or persons of Mongolian descent, not born in the United States, nor Indians not taxed, who have not severed their tribal relations, and adopted the habits of civilization, either vote, serve as jurors, or hold any civil office."

It was amended, as proposed by S.L. 1949, p. 597, H.J.R. No. 2 and ratified at the general election in November, 1950, to read as follows:

"§ 3. No person is permitted to vote, serve as a juror, or hold any civil office who is under guardianship, idiotic or insane, or who has, at any place, been convicted of treason, felony, embezzlement of the public funds, bartering or selling, or offering to barter or sell his vote, or purchasing or offering to purchase the vote of another, or other infamous crime, and who has not been restored to the rights of citizenship, or who, at the time of such election, is confined in prison or conviction of a criminal offense, or who is a bigamist or polygamist, or is living in what is known as patriarchal, plural or celestial marriage, or in violation of any law of this state, or of the United States, forbidding any such crime; or who, in any manner, teaches, advises, counsels, aids, or encourages any person to enter into bigamy, polygamy, or such patriarchal, plural, or celestial marriage, or to live in violation of any such law, or to commit any such crime; or who is a member of, or contributes to the support, aid, or encouragement of, any order, organization, association, corporation, or society, which teaches, advises, counsels, encourages, or aide any person to enter into bigamy, polygamy or such patriarchal or plural marriage, or which teaches or advises that the laws of this state prescribing rules of civil conduct, are not the supreme law of the state; nor shall Chinese, or persons of Mongolian descent, not born in the United States, either vote, serve as jurors, or hold any civil office."

This section was amended by S.J.R. No. 105 (S.L. 1998, p. 1361) and ratified at the general election November 3, 1998, to read as it now appears.

Prior to the 1998 amendment, this section read as set out in the bound volume.

**"§ 3. Disqualification of certain persons.** - No person is permitted to vote, serve as a juror, or hold any civil office who is under guardianship, idiotic or insane, or who has, at any place, been convicted of treason, felony, embezzlement of the public funds, bartering or selling, or offering to barter or sell his vote,



or purchasing or offering to purchase the vote of another, or other infamous crime, and who has not been restored to the rights of citizenship, or who, at the time of such election, is confined in prison on conviction of a criminal offense, or who is a bigamist or polygamist, or is living in what is known as patriarchal, plural or celestial marriage, or in violation of any law of this state, or of the United States, forbidding any such crime; or who, in any manner, teaches, advises, counsels, aids, or encourages any person to enter into bigamy, polygamy, or such patriarchal, plural, or celestial marriage, or to live in violation of any such law, or to commit any such crime; or who is a member of, or contributes to the support, aid, or encouragement of, any order, organization, association, corporation, or society, which teaches, advises, counsels, encourages, or aids any person to enter into bigamy, polygamy or such patriarchal or plural marriage, or which teaches or advises that the laws of this state prescribing rules of civil conduct, are not the supreme law of the state."

It was amended as proposed by S.L. 1981, p. 777, H.J.R. No. 7 and ratified at the general election November 2, 1982 to read as it now appears.

**Cross ref.** Disqualifications, §§ 34-402 - 34-407.

**Comp. provisions:** Wash. Art. 6, § 3.

**Wyo.** Art. 6, § 6.

**Sec. to sec. ref.** This section is referred to in § 50-412.

**Cited in:**

Powell v. Spackman, 7 Idaho 692, 65 P. 503, 54 L.R.A. 378 (1901); Adams v. Lansdon, 18 Idaho 483, 110 P. 280 (1910); Griffith v. Owens, 30 Idaho 647, 166 P. 922 (1917); Schwartzmiller v. Winters, 99 Idaho 18, 576 P.2d 1052 (1978).

This section is self-executing. The principal and primary object of the people and their representatives in the constitutional convention in adopting this section was to suppress and forever prohibit and discountenance bigamy and polygamy in the state of Idaho, under whatever name or distinction it might be given, and under whatever doctrine or creed it might be recognized, taught or practiced by any person or organizations. Toncray v. Budge, 14 Idaho 621, 95 P. 26 (1908).

Bigamy and polygamy defined and distinguished, see State v. Martinez, 43 Idaho 180, 250 P. 239 (1926).

**Analysis**

Construction and Effect.

Felony Convictions.

Requirement of Test Oath.

Selling Liquor to Indians.

**Construction and Effect.**

This section was moderated by the framers of the constitution in adopting § 4 which authorizes the legislature to prescribe additional qualifications for the exercise of the right of suffrage. Fisher v. Masters, 59 Idaho 366, 83 P.2d 212 (1938).

**Felony Convictions.**

The restrictions of Rules of Evidence, Rule 609, Criminal Rules, Rules 32(b)(2) and 46(a)(7) and § 19-2514 on convicted felons do not overcome the broad effect of subsection (2) of § 18-310 restoring the rights of convicted felons upon final discharge, and the attendant provisions of this section, giving a discharged felon the right to vote and subsection (2)(d) of § 2-209 giving discharged felons the right to

serve on a jury. United States v. Gomez, 911 F.2d 219 (9th Cir. 1990).

**Requirement of Test Oath.**

This section was not violated by act of February 25, 1891, prescribing a test oath containing conditions of suffrage additional to those prescribed by this section. Shepherd v. Grimmett, 3 Idaho 403, 31 P. 793 (1892).

**Selling Liquor to Indians.**

Former law that prohibited the sale of intoxicating liquor to Indians was not unconstitutional even though Indians have now received rights of citizenship. State v. Rorvick, 76 Idaho 58, 277 P.2d 566 (1954).

**Collateral References.**

Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, p. 914; Vol. II, pp. 1028, 1150.

Voting rights of persons mentally incapacitated. 80 A.L.R.3d 1116.

**2-209. Court determination of qualification of prospective juror - Qualifications - Physician's certificate of physical or mental disability.**

(1) The court, upon request of the jury commission or a prospective juror or on its own initiative, shall determine on the basis of information provided on the juror qualification form or interview with the prospective juror or other competent evidence whether the prospective juror is disqualified for jury service. The clerk shall enter this determination in the space provided on the juror qualification form and on the alphabetical list of names drawn from the master jury wheel.

(2) A prospective juror is disqualified to serve on a jury if he:

(a) is not a citizen of the United States, eighteen (18) years old, and a resident of the county;

(b) is unable to read, speak, and understand the English language;

(c) is incapable, by reason of his physical or mental disability, of rendering satisfactory jury service; but a person claiming this disqualification may be required to submit a physician's certificate as to the disability, and the certifying physician is subject to inquiry by the court at its discretion;

(d) has lost the right to vote because of a criminal conviction; or

(e) is seventy (70) years of age or older and submits in writing a statement requesting that he be excused.

(3) The court shall provide that a mother nursing her child shall have service postponed until she is no longer nursing the child.

(4) The court may require a person requesting a postponement for any medical reason to provide documentation from a medical care provider and the provider is subject to inquiry by the court at its discretion.

[1971, ch. 169, § 8, p. 799; am. 1972, ch. 8, § 1, p. 12; am. 1981, ch. 266, § 1, p. 565; am. 1996, ch. 189, § 1, p. 597.]

**Compiler's notes.** Section 2 of S.L. 1972, ch. 8 declared an emergency. Approved February 4, 1972.

**Sec. to sec. ref.** This section is referred to in § 2-212.

**Rule to sec. ref.** This section is referred to in I.R.C.P., Rule 47(d),

**Analysis**

Qualifications.

Systematic Underrepresentation of Group.

**Qualifications.**

It would be patently unreasonable to require the State to utilize jurors who are not proficient in the English language, unable to understand testimony, directions of the court, or read exhibits and instructions; furthermore, it is not difficult to perceive that the State has a significant interest in the integrity of the jury system, and that that interest is manifestly and primarily advanced by limiting jurors to those who are capable of understanding the proceedings, and as long as the qualification is equally administered as to all foreign language speakers there is no constitutional infirmity in the requirement that jurors be competent in English. *State v. Paz*, 118 Idaho 542, 798 P.2d 1 (1990), cert. denied, 498 U.S. 952, 111 S. Ct. 2911, 115 L. Ed. 2d 1074, overruled on other grounds, *State v. Card*, 121 Idaho 425, 825 P.2d 1081 (1991), cert.

denied, 501 U.S. 1259, 111 S. Ct. 2911, 115 L. Ed. 2d 1074, overruled on other grounds, *State v. Card*, 121 Idaho 425, 825 P.2d 1081 (1991), cert. denied, 506 U.S. 915, 113 S. Ct. 321, 121 L. Ed. 2d 241 (1992).

The state is entitled to use voter registration and driver's license lists as a means of selecting jurors, and the state may establish minimum qualifications for jurors where the qualifications relate to the juror's competence to understand and administer the law. *State v. Paz*, 118 Idaho 542, 798 P.2d 1 (1990), cert. denied, 498 U.S. 952, 111 S. Ct. 2911, 115 L. Ed. 2d 1074, overruled on other grounds, *State v. Card*, 121 Idaho 425, 825 P.2d 1081 (1991), cert. denied, 501 U.S. 1259, 111 S. Ct. 2911, 115 L. Ed. 2d 1074, overruled on other grounds, *State v. Card*, 121 Idaho 425, 825 P.2d 1081 (1991), cert. denied, 506 U.S. 915, 113 S. Ct. 321, 121 L. Ed. 2d 241 (1992).

#### **Systematic Underrepresentation of Group.**

If the application of this section results in systematic underrepresentation of Hispanics as jurors, the jury selection system may still be upheld if the State shows that a significant state interest is manifestly and primarily advanced by those aspects of the jury selection process that result in the disproportionate exclusion of a distinctive group. *State v. Paz*, 118 Idaho 542, 798 P.2d 1 (1990), cert. denied, 498 U.S. 952, 111 S. Ct. 2911, 115 L. Ed. 2d 1074, overruled on other grounds, *State v. Card*, 121 Idaho 425, 825 P.2d 1081 (1991), cert. denied, 501 U.S. 1259, 111 S. Ct. 2911, 115 L. Ed. 2d 1074, overruled on other grounds, *State v. Card*, 121 Idaho 425, 825 P.2d 1081 (1991), cert. denied, 506 U.S. 915, 113 S. Ct. 321, 121 L. Ed. 2d 241 (1992).

### **Decisions Under Prior Law.**

#### **Analysis**

Challenge to Panel.

Qualifications as Electors.

#### **Challenge to Panel.**

Disqualification of any individual juror is not ground for challenge to panel. *State v. Cosler*, 39 Idaho 519, 228 P. 277 (1924).

#### **Qualifications as Electors.**

Jurors must have all qualifications of electors. *Territory v. Evans*, 2 Idaho (Hasb.) 651, 23 P. 232, 7 L.R.A. 646 (1890), overruled on other grounds, *State v. Potter*, 6 Idaho 584, 57 P. 431 (1899).

A juror should possess the qualifications of an elector, but it does not follow that he need be registered as such, as registration does not go to his qualification but is merely a precaution to prevent fraud in election. *Territory v. Evans*, 2 Idaho (Hasb.) 651, 23 P. 232, 7 L.R.A. 646 (1890), overruled on other grounds, *State v. Potter*, 6 Idaho 584, 57 P. 431 (1899).

Right to vote has no direct relation to jury duty; the two are not treated together in either the Constitution or the statutes; one right is guaranteed by the Constitution, the other is a duty. *State v. Kelley*, 39 Idaho 668, 229 P. 659 (1924).

#### **Collateral References.**

38 Am. Jur. 2d, Grand Jury, §§ 12 - 15.

47 Am. Jur. 2d, Jury, §§ 180, 184.

38A C.J.S., Grand Juries, §§ 11, 35, 63.



## IDAHO DEPARTMENT OF CORRECTION

COPY

DIRK KEMPTHORNE  
GOVERNORRALPH D. TOWNSEND  
CHAIRMAN, BOARD OF CORRECTIONFINAL DISCHARGE  
IDAHO DEPARTMENT OF CORRECTION

In accordance with the laws of the State of Idaho, VALENTINO ALEX HERRERA, 18269, has completed all the time required to be served in the following cases and is hereby discharged from the custody of the Idaho Department of Correction effective September 29, 2001.

COUNTY/ CASE NUMBER	DATE SENTENCED	DATE DISCHARGED	CRIME
CASSIA CR95-1430D	11/21/1996	09/29/2001	ASSAULT/BATT ON OFFICER

WITNESS WHEREOF, I affix the Seal of the Board of Correction.

September 29, 2001

Rhonda Smoot  
Sentencing Specialist  
Idaho Department of Correction

Post-It Fax Note	7671	Date	9/29/01	# of pages	1
To	LSO	From	Rhonda		
Co./Dept.		Co.			
Phone #		Phone #			
Fax #		Fax #			

000091

ORIGINAL  
COPY

CLERK OF DISTRICT COURT  
CASSIA COUNTY, ID

FILED

2006 MAR 03 PM 2:41

CLERK OF DISTRICT COURT

BY \_\_\_\_\_  
CLERK

1 ALFRED E. BARRUS (ISB #1704)  
Prosecuting Attorney  
2 BLAINE P. CANNON (ISB #5575)  
Deputy Prosecuting Attorney  
3 DOUGLAS G. ABENROTH (ISB #7181)  
Deputy Prosecuting Attorney  
Cassia County, Idaho  
1918 Overland Avenue  
4 Post Office Box 7  
Burley, Idaho 83318  
Telephone: 208-878-0419  
5 Facsimile: 208-878-2924

6 Attorneys for State of Idaho  
06-134

7 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
8 STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA  
9

10 STATE OF IDAHO,

Case No. CR 2006-03507 D

11 Plaintiff,

JUDGMENT OF CONVICTION,  
ORDER OF COMMITMENT:  
Part I, Battery on an Officer; and  
Part II, Persistent Violator

12 vs.

13 VALENTINO ALEX HERRERA,

DOB: [REDACTED]

14 SS#: [REDACTED]

15 Defendant.

16 On August 3, 2006, the defendant came into Court with his attorney, Kent Jensen,  
17 along with Blaine P. Cannon, Deputy Prosecuting Attorney, to be arraigned upon the Information  
18 filed against him by the State of Idaho, charging the defendant with Battery on an Officer, which  
19 said crime was committed on June 4, 2006.

20 The Court, after conducting the arraignment, asked the defendant if he pleaded  
21 "Guilty" or "Not Guilty" to the offense charged in the Information, and, thereupon, the defendant,  
22 pleaded that he was "Not Guilty" as charged in the Information.

23 On January 4, 2007, the defendant again came into court with his attorney, Kent  
24 Jensen, and was found guilty of Battery on an Officer by a jury. On the same day, the defendant  
25 admitted to the charge of Persistent Violator.

26 On April 16, 2007, the defendant again came into Court with his attorney, Kent  
27 Jensen, along with the State's attorney, Blaine P. Cannon, and was informed by the Court that this  
28

JUDGMENT OF CONVICTION, ORDER OF COMMITMENT -I

H:\Stamnet County Criminal Sentencings-PV Depositions Defendants\JCommitment-Herrera.wpd

000092

1 was the time and place set for sentencing, and was reminded of earlier Court proceedings.

2 The defendant was then asked if he had any legal cause or reason to offer why  
3 judgment and sentence should not be pronounced against him, to which he replied that he  
4 had none. No sufficient cause being shown or appearing to the Court, the Court rendered its  
5 Judgment, as follows:

6 **IT IS ORDERED, ADJUDGED AND DECREED** that the defendant be,  
7 and is hereby convicted of Battery on an Officer, a felony, in violation of I.C. § 18-915(d) and  
8 18-903, and of being a Persistent Violator in violation of Idaho Code Section 19-2514.

9 **IT IS FURTHER ORDERED** that the defendant be, and is hereby guilty, as  
10 charged and convicted; that the offense for which the defendant is adjudged guilty herein was  
11 committed on June 4, 2006.

12 **IT IS FURTHER ORDERED** that the defendant be, and is hereby sentenced,  
13 pursuant to the Unified Sentencing Act, Idaho Code, Section 19-2513, to the custody of the  
14 Idaho State Board of Correction, to be held and incarcerated by such Board, as follows:

15 **PART I - COUNT I: BATTERY ON AN OFFICER**

16 For a minimum fixed and determinate period of confinement of five (5)  
17 years; such fixed minimum period shall thereafter be followed by an indeterminate  
18 period of custody of up to zero (0) years, for a total period of confinement not to exceed  
19 five (5) years.

20 **PART II: PERSISTENT VIOLATOR**

21 For a minimum fixed and determinate period of confinement of five (5)  
22 years; such fixed minimum period shall thereafter be followed by an indeterminate  
23 period of custody of up to twenty (20) years, for a total period of confinement not to  
24 exceed twenty five (25) years.

25 That the sentence for Part II: Persistent Violator shall run consecutive to  
26 the sentence for Part I - Count I, Battery on an Officer.

27  
28 JUDGMENT OF CONVICTION, ORDER OF COMMITMENT -2

H:\Shantel County Criminal Sentencings-PV Dispositions\Defendants\JCommitment-Herrera typd

000093

**IT IS FURTHER ORDERED:**

(a) That pursuant to Idaho Code § 72-1025, that the defendant pay a fine in the sum of Fifty Dollars (\$50.00) *for each convicted count* to be applied to the Victim's Compensation Fund;

(b) That, pursuant to Idaho Code § 31 -3201A(b), the defendant pay Court costs of Seventeen and 50/100 Dollars (\$17.50) *for each convicted count*;

(c) That, pursuant to Idaho Code § 31-3201(B), the defendant pay a P.O.S.T. Academy fee in the sum of Ten Dollars (\$10.00) *for each convicted count*.

(d) That, defendant shall pay an administrative surcharge fee to Cassia County in the sum of Ten Dollars (\$10.00) *for each convicted count*.

(e) That, pursuant to Idaho Code § 31-3201(5), the defendant shall pay a Ten Dollar (\$10.00) ISTARS Technology Fee *for each convicted count*.

(f) That the defendant shall receive credit for one hundred forty three (143) days served in the county jail through April 16, 2007.

(g) That the defendant shall reimburse Cassia County for any period of time spent in the county jail with regards to this case, at a rate of \$25.00 per day, not to exceed \$500.00 as authorized by I.C. § 20-607.

(h) That, defendant shall reimburse Cassia County for the services of the Public Defender, pursuant to Idaho Code § 19-4705, in the sum of Twelve Hundred Dollars (\$1,200.00).

(i) That the defendant shall pay restitution to the victim(s).

(j) Pursuant to Idaho Code § 19-5304(2), under the Victim's Rights Statute, the Court will issue a separate Order of Restitution to the victims herein, to which reference is hereby made.

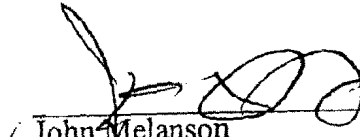
(k) That the defendant is ordered to comply with the Idaho DNA and Genetic Marker Act pursuant to Idaho Code Section 19-5508.



1  
2  
3 **IT IS FURTHER ORDERED** that the bond heretofore posted, if any, in the  
4 above-entitled action be, and the same is hereby, exonerated.

5 **IT IS FURTHER ORDERED** that the defendant be committed to the custody  
6 of the Sheriff of Cassia County, Idaho, for delivery forthwith to the custody of the Idaho State  
7 Board of Corrections.

8 **DATED** this 24<sup>th</sup> day of April, 2007

9  
10   
11 John Melanson  
12 District Judge  
13  
14  
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1  
2  
3 **CLERK'S CERTIFICATE OF MAILING**

4 I hereby certify that a true and correct copy of the foregoing Order / Judgment  
5 was mailed, postage prepaid, this 30 day of April, 2007 to the following:

6 Blaine P. Cannon  
7 Deputy Prosecuting Attorney  
8 P.O. Box 7  
9 Burley, ID 83318

10 David Haley  
11 Mini-Cassia Public Defender  
12 P.O. Box 188  
13 Burley, Idaho 83318

14 Mini-Cassia Criminal Justice Center  
15 1415 Albion Avenue  
16 Burley, Idaho 83318

17 Probation and Parole  
18 1354 Albion Avenue  
19 Burley, Idaho 83318

20 *(certified copy)*  
21 Department of Corrections  
22 1299 North Orchard Street, Suite 110  
23 Boise, Idaho 83706

24 *(if applicable)*  
25 Treasurer's Office  
26 Cassia County Courthouse  
27 1459 Overland Avenue  
28 Burley, Idaho 83318

*(certified copy - sexual offenses)*  
Cassia County Sheriff's Office  
Attention: Tim Little  
129 East 14<sup>th</sup> Street  
Burley, Idaho 83318

LARRY A. MICKELSEN  
CLERK OF THE DISTRICT COURT

By   
Deputy Clerk

JUDGMENT OF CONVICTION, ORDER OF COMMITMENT -5

MOLLY J. HUSKEY  
State Appellate Public Defender  
State of Idaho  
I.S.B. # 4843

SARA B. THOMAS  
Chief, Appellate Unit  
I.S.B. # 5867  
3647 Lake Harbor Lane  
Boise, Idaho 83703  
(208) 334-2712

FILED

2007 JUN 14 A 7:50

LARRY A. NICKELSEN

CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR CASSIA COUNTY

STATE OF IDAHO,

Plaintiff-Respondent,

v.

VALENTINO HERRERA,

Defendant-Appellant.

CASE NO. CR 2006-3507\*D

S.C. DOCKET NO. \_\_\_\_\_

AMENDED  
NOTICE OF APPEAL

TO: THE ABOVE-NAMED RESPONDENT, STATE OF IDAHO, AND  
THE PARTY'S ATTORNEYS, BLAIN P. CANNON, CASSIA COUNTY  
PROSECUTOR, P.O. BOX 7, BURLEY, ID 83318, AND THE CLERK OF THE  
ABOVE-ENTITLED COURT:

NOTICE IS HEREBY GIVEN THAT:

1. The above-named appellant appeals against the above-named respondent to the Idaho Supreme Court from the Judgment of Conviction. Order of Commitment entered in the above-entitled action on the 25<sup>th</sup> day of April, 2007, the Honorable John M. Melanson, presiding.
2. That the party has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Idaho Appellate Rule (I.A.R.) 11(c)(1-10).

3. A preliminary statement of the issues on appeal, which the appellant then intends to assert in the appeal, provided any such list of issues on appeal shall not prevent the appellant from asserting other issues on appeal, are:

- (a) Was the evidence submitted by the State sufficient to support a finding of guilty?
- (b) Did the district court err in denying the appellant's motion to dismiss on the grounds that the complaining witness was not a police officer?
- (c) Did the district court err in denying the appellant's motion to dismiss the persistent violator charge?

4. There is a portion of the record that is sealed. That portion of the record that is sealed is the Presentence Investigation Report (PSI).

5. The appellant requests the preparation of the entire reporter's standard transcript as defined in I.A.R. 25(a). The appellant also requests the preparation of the following portions of the reporter's transcript:

- (a) Motion to Dismiss Hearing held on December 18, 2006;
- (b) Jury Trial held January 3, 2007, to include the opening statements, closing arguments, jury instruction conferences and orally presented jury instructions; and
- (c) Sentencing Hearing held on April 16, 2007.

6. The appellant requests the standard clerk's record pursuant to I.A.R. 28(b)(2). The appellant requests the following documents to be included in the clerk's record, in addition to those automatically included under I.A.R. 28(b)(2):

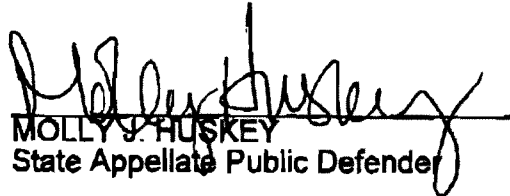
- (a) Affidavit of Probable Cause filed June 20, 2006;
- (b) Transcript of Preliminary Hearing held on July 14, 2006, lodged September 29, 2006;
- (c) Letter Received – Presentence Investigator filed January 19, 2007;
- (d) Letter Received March 13, 2007;
- (e) Letter Received from Defendant to Judge filed March 15, 2007;
- (f) Letter lodged March 22, 2007;
- (g) Objection to Defendant's Motion to Reconsider Sentence filed May 2, 2007; and
- (h) Any exhibits, including but not limited to letters or victim impact statements, addendums to the PSI or other items offered at sentencing hearing including, but not limited to, the Psychological Evaluation dated February 21, 2007, and filed February 26, 2007, and Addendum to PSI filed March 16, 2007;

7. I certify:

- (a) That a copy of this Amended Notice of Appeal has been served on the reporter;
- (b) That the appellant is exempt from paying the estimated fee for the preparation of the record because the appellant is indigent. (Idaho Code §§ 31-3220, 31-3220A, I.A.R. 24(e));
- (c) That there is no appellate filing fee since this is an appeal in a criminal case (Idaho Code §§ 31-3220, 31-3220A, I.A.R. 23(a)(8));

- (d) That arrangements have been made with Cassia County who will be responsible for paying for the reporter's transcript, as the client is indigent, I.C. §§ 31-3220, 31-3220A, I.A.R. 24(e); and
- (e) That service has been made upon all parties required to be served pursuant to I.A.R. 20.

DATED this 13<sup>th</sup> day of June, 2007.

  
MOLLY J. HUSKEY  
State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have this 13<sup>th</sup> day of June, 2007, caused a true and correct copy of the attached AMENDED NOTICE OF APPEAL to be placed in the United States mail, postage prepaid, addressed to:

VALENTINO HERRERA  
INMATE # 18269  
IDAHO MAXIMUM SECURITY INSTITUTION A BLOCK  
PO BOX 51  
BOISE ID 83707

KENT D JENSEN  
ATTORNEY AT LAW  
PO BOX 249  
BURLEY ID 83318

MAUREEN NEWTON  
8TH AND G STREET  
PO BOX 368  
RUPERT ID 83350

DENISE SCHLODER  
COURT REPORTER  
1459 OVERLAND AVE  
BURLEY ID 83318

BLAIN P CANNON  
CASSIA CONTY PROSECUTORS OFFICE  
PO BOX 7  
BURLEY ID 83318

KENNETH K JORGENSEN  
DEPUTY ATTORNEY GENERAL  
CRIMINAL DIVISION  
PO BOX 83720  
BOISE ID 83720 0010

Hand delivered to Attorney General's mailbox at Supreme Court



HEATHER R. CRAWFORD  
Administrative Assistant

MJH/TMF/SBT/hrc

**Clayne S. Zollinger, Jr.** (ISB #4172)

Attorney at Law

P. O. Box 210

Rupert, ID 83350

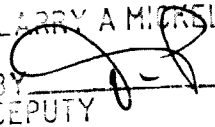
Office: (208) 436-1122

Facsimile: (208) 436-7837

FILED \_\_\_\_\_

2007 JUN 22 P 5:14

LARRY A. MICKELSEN

BY  I  
DEPUTY

Attorney for: Plaintiff

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA**

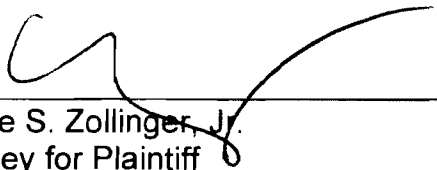
STATE OF IDAHO,	)	Case No: CR-2006-03507*D
	)	
Plaintiff,	)	
	)	
vs.	)	<b>MOTION FOR PAYMENT</b>
	)	<b>OF ATTORNEYS FEES</b>
VALENTINO HERRERA,	)	
	)	
Defendant.	)	

COMES NOW, Clayne S. Zollinger Jr., attorney for the Plaintiff in the above entitled matter, and move this Court for and Order for Payment or Attorney Fees for the said reason that counsel is court appointed and he is entitled to payment of fees for his services.

Counsel requests payment in the amount shown on the Billing Statement attached as Exhibit "A". Court Appointed attorney Clayne S. Zollinger, Jr., requests that payment for 0.5 hours at the set rate of \$55.00, for a total sum of Twenty Seven Dollars and 50 cents [\$27.50] be made directly to him for his services in this matter.



DATED this 26 day of June, 2007.

  
\_\_\_\_\_  
Clayne S. Zollinger, Jr.  
Attorney for Plaintiff

**CERTIFICATE OF SERVICE**

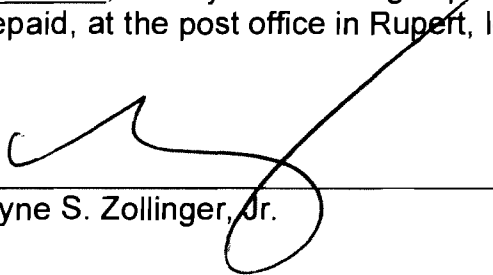
I hereby certify that on this 26<sup>th</sup> day of June 2007, I served a true and correct copy of the within and foregoing document upon the attorney(s) named below in the manner noted:

Doug Abenroth  
Prosecuting Attorney  
PO Box 7  
Burley, Idaho 83318

       x        By depositing copies of the same in the United States mail, postage prepaid, at the post office in Rupert, Idaho.

       By hand delivering copies of the same to the office of the attorney(s) at the address stated above.

       By telecopying copies of the same to said attorney(s) at the telecopied number(s)       , and by then mailing copies of the same in the United States Mail, postage prepaid, at the post office in Rupert, Idaho.

  
\_\_\_\_\_  
Clayne S. Zollinger, Jr.

Clayne S. Zollinger, Jr.  
P.O. Box 210  
Rupert, ID 83350

Cassia County  
1459 Albion Ave  
Burley, ID 83318

**TERMS OF PAYMENT:**

Payment due by 10th  
Interest accrues on unpaid balance  
18 % annual rate

Hourly Rate \$ 55.00

**Valentino Herrera**  
**cr-05-3507**

---

STATEMENT

---

Date	Description	Amount	Total
	Previous Balance		
06/04/07	Receive and Review Document from Court	0.1	5.50
06/14/07	Receive and Review Notice of Hearing	0.1	5.50
06/14/07	Receive and Review Documents from Blaine C	0.3	16.50

Balance Due ----

0.5	\$	27.50
-----	----	-------

**000104**



CLERK'S CERTIFICATE OF SERVICE

I hereby certify that on this 26 day of June, 2007, I served a true and correct copy of the within and foregoing document upon the attorney(s) named below in the manner noted:

Doug Abenroth  
Prosecuting Attorney  
PO Box 7  
Burley, ID 83318

Clayne S. Zollinger, Jr.  
P.O. Box 210  
Rupert, ID 83350

\_\_\_\_\_ By depositing copies of the same in the United States mail, postage prepaid, at the post office in Rupert, Idaho.

\_\_\_\_\_ By hand delivering copies of the same to the office of the attorney(s) at the address stated above.

X By placing a copy of the same to said attorney(s) in the courthouse basket located in the Magistrate Court Clerk's office, located in the Courthouse in Rupert, Idaho.

LARRY MICKELSEN, CLERK OF THE COURT

By:   
Deputy Clerk

Clayne S. Zollinger, Jr. (ISB #4172)

Attorney-at-Law

P.O. Box 210

Rupert, ID 83350

Office: (208) 436-1122

Fax: (208) 436-7837

Attorney for: Defendant

DISTRICT COURT  
CASSIA COUNTY ID

FILED

2007 JUL -6 P 4: 25

LARRY A MICKELSEN

BY NCM  
DEPUTY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO IN AND FOR THE COUNTY OF CASSIA

STATE OF IDAHO,

Plaintiff,

vs.

VALENTINO HERRERA,


Defendant.

Case No. CR-2006-3507\*D

**MOTION TO CONTINUE**

COMES NOW Clayne S. Zollinger, Jr., counsel for the Defendant, Valentino Herrera, and hereby moves the Court to continue the hearing scheduled for Friday, July 6, 2007 at 8:30 a.m. The basis for this motion is that counsel for the Defendant just recently been appointed to represent the Defendant, and have not yet received the entire file, and cannot be prepared for a hearing July 6, 2007.

DATED this 3<sup>rd</sup> day of July, 2007.

  
Clayne S. Zollinger, Jr.  
Attorney for Defendant

**CERTIFICATE OF MAILING**

I hereby certify that on this 31<sup>st</sup> day of July, 2007, I served a true and correct copy of the within and foregoing document upon the attorney(s) named below in the manner noted:

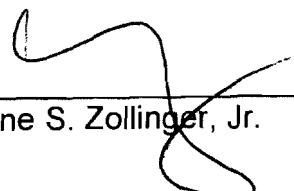
Blaine Cannon  
PO Box 7  
Burley, ID 83318

  X   By depositing copies of the same in the United States mail, postage prepaid, at the post office in Rupert, ID.

       By hand delivering copies of the same to the office of the attorney(s) at the address(es) stated above.

       By placing copies in the attorney's baskets at the Courthouse in Rupert, Idaho.

       By telecopying copies of the same to said attorney(s) at the telecopied number(s) (208) 878-2924, and by then mailing copies of the same in the United States Mail, postage prepaid, at the post office in Rupert, Idaho.

BY:   
Clayne S. Zollinger, Jr.



**CLERK'S CERTIFICATE OF SERVICE**

I hereby certify that on this 10 day of July, 2007, I served a true and correct copy of the within and foregoing document upon the attorney(s) named below in the manner noted:

Clayne S. Zollinger, Jr.  
PO Box 210  
Rupert, ID 83350

Blaine Cannon  
PO Box 7  
Burley, ID 83318

*minidoka clerk*

\_\_\_\_ By depositing copies of the same in the United States mail, postage prepaid, at the United States Post Office.

\_\_\_\_ By hand delivering copies of the same to the office of the attorney(s) at the address(es) stated above.

\_\_\_\_ By placing copies in the attorney's baskets at the Courthouse in Burley, Idaho.

Larry Mickelsen, Clerk of Court

BY: *Agunderson*  
Deputy



DISTRICT COURT  
CASSIA COUNTY ID

FILED

2007 JUL 26 A 11:15

LARRY A NICKELSEN

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO  
IN AND FOR THE COUNTY OF CASSIA

DATE: July 26, 2007

Time: 9:00 a.m.

Judge John Melanson  
District Judge

Larry Mickelsen  
Clerk of the Court

Denise Schloder  
Official Court Reporter

Tammi Pollard  
Deputy Clerk

DISTRICT COURT MINUTES

*CR 06-3507\*D*

*RULE 35 MOTION*

*MOTION FOR RESTITUTION*

*Battery on an Officer*

State of Idaho

Al Barrus

Vs.

Valentino Herrera

Clayne Zollinger

**VALENTINO HERRERA**  
**CR 06-3507\*D**

**RULE 35 MOTION**  
**MOTION FOR RESTITUTION**  
**IN CUSTODY**

Date: July 26, 2007

Time: 9:30 a.m.

Court introduces all parties present; case reviewed to date by Court; defendant is present with Counsel Clayne Zollinger; Al Barrus is present on behalf of the State of Idaho.

Clayne Zollinger addresses the Court Re: Has had no contact with the defendant.

Mr. Zollinger is asking for a continuance in this matter.


Court will **GRANT** a continuance in this matter.

**Court will schedule this matter for August 31, 2007 at 2:00 p.m.**

Hearing Concludes: 9:33 a.m.



9/14  
DATED this 9/14 day of August, 2007.

  
\_\_\_\_\_  
Clayne S. Zollinger, Jr.  
Attorney for Plaintiff

**CERTIFICATE OF SERVICE**

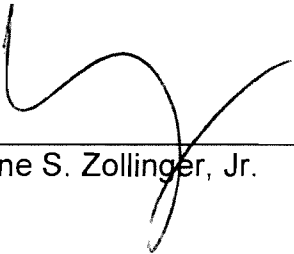
I hereby certify that on this 9/14 day of August 2007, I served a true and correct copy of the within and foregoing document upon the attorney(s) named below in the manner noted:

Doug Abenroth  
Prosecuting Attorney  
PO Box 7  
Burley, Idaho 83318

       x        By depositing copies of the same in the United States mail, postage prepaid, at the post office in Rupert, Idaho.

       By hand delivering copies of the same to the office of the attorney(s) at the address stated above.

       By telecopying copies of the same to said attorney(s) at the telecopied number(s)       , and by then mailing copies of the same in the United States Mail, postage prepaid, at the post office in Rupert, Idaho.

  
\_\_\_\_\_  
Clayne S. Zollinger, Jr.

Clayne S. Zollinger, Jr.  
P.O. Box 210  
Rupert, ID 83350

*Cassia County*  
Minidoka County  
~~P.O. Box 368~~  
~~Rupert, ID 83350~~

**TERMS OF PAYMENT:**

Payment due by 10th  
Interest accrues on unpaid balance  
18 % annual rate

**Hourly Rate \$ 55.00**

**State of Idaho Vs. Valentino Herrera**

STATEMENT

Date	Description	Amount	Total
	Previous Balance		
06/29/07	Receive and Review Letter from Client, Draft Response	0.3	16.50
06/29/07	Draft Motion	0.3	16.50
07/05/07	Receive and Review File, Conference with Kent Jensen	1.1	60.50
07/16/07	Organize File	0.6	33.00
07/24/07	Review File, Review Letter from Client, Prepare	1.5	82.50
07/25/07	Review File, Receive and Review Letter from Client	1.3	71.50
07/26/07	Court Hearing	0.5	27.50

Balance Due ----

5.6 \$ 308.00

**000115**

Clayne S. Zollinger, Jr. (ISB #4172)

Attorney at Law

P. O. Box 210

Rupert, ID 83350

Office: (208) 436-1122

Facsimile: (208) 436-7837

Attorney for: Defendant

DISTRICT COURT  
CASSIA COUNTY, ID

FILED

2007 AUG 23 P 3:10

CLAYNE S. ZOLLINGER, JR.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

STATE OF IDAHO,

Plaintiff,

vs.

VALENTINO ALEX HERRERA,

Defendant.

Case No: CR-2006-0003507

**ORDER APPROVING PAYMENT  
OF ATTORNEY**

The Court having heard the Motion heretofore made in the above-entitled action by Clayne S. Zollinger, Jr., Court-Appointed attorney for the defendant, and the Court being fully advised in the premises;

IS HEREBY ORDERED, that the Cassia County Commissioners issue payment for 5.6 hours at the set rate of \$55.00, for a total sum of Three Hundred Dollars and 00 Cents [\$308.00] to Clayne S. Zollinger, Jr. for court appointed services rendered in the above-entitled matter.

DATED this 23 day of August, 2007.

Judge

000116

CLERK'S CERTIFICATE OF SERVICE

I hereby certify that on this 23 day of August, 2007, I served a true and correct copy of the within and foregoing document upon the attorney(s) named below in the manner noted:

*Cassia County Auditor's Office*

Doug Abenroth  
Prosecuting Attorney  
PO Box 7  
Burley, ID 83318

Clayne S. Zollinger, Jr.  
P.O. Box 210  
Rupert, ID 83350

\_\_\_\_\_ By depositing copies of the same in the United States mail, postage prepaid, at the post office in Rupert, Idaho.

\_\_\_\_\_ By hand delivering copies of the same to the office of the attorney(s) at the address stated above.

X \_\_\_\_\_ By placing a copy of the same to said attorney(s) in the courthouse basket located in the Magistrate Court Clerk's office, located in the Courthouse in Rupert, Idaho.

LARRY MICKELSEN, CLERK OF THE COURT

By: *[Signature]*  
Deputy Clerk

000117

2007 Aug. 31

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO  
IN AND FOR THE COUNTY OF CASSIA**

**DATE: August 31, 2007**

**TIME: 3:44 p.m.**

**John Melanson  
District Judge**

**Larry Mickelsen  
Clerk of Court**

**Maureen Newton  
Official Court Reporter**

**Tara Gunderson  
Deputy Clerk**

**DISTRICT COURT MINUTES**

**CR 06-3507 D**

**Rule 35 Motion**

**Motion for Restitution**

**State of Idaho**

**Blaine Cannon**

**Vs.**

**Valentino Herrera**

**Clayne Zollinger**

**000118**



**VALENTINO HERRERA**  
**CR 06-3507 D**

Date: Friday, August 31, 2007  
Time: 3:44 p.m.

The parties have agreed to continue this matter for 1 month.

Hearing concludes: 3:46 p.m.

Clayne S. Zollinger, Jr. (ISB #4172)

Attorney-at-Law

P.O. Box 210

Rupert, ID 83350

Office: (208) 436-1122

Fax: (208) 436-7837

Attorney for: Defendant

MAGISTRATE COURT  
CASSIA COUNTY ID

FILED \_\_\_\_\_

2007 OCT 11 P 2:42

LARRY A. MICKELSEN

BY   
DEPUTY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO IN AND FOR THE COUNTY OF CASSIA

STATE OF IDAHO,

Plaintiff,

vs.

VALENTINO ALEX HERRERA,


Defendant.

Case No. CR-2006-0003507 D

**MOTION TO CONTINUE**

COMES NOW the defendant by and through his attorney Clayne S. Zollinger, Jr., moves to continue the hearing which is set for Thursday, October 18th, 2007 at 9:00 a.m. The basis for this motion is that counsel for the defendant is previously scheduled to be at a hearing for The State vs. Dale Ply in Idaho Falls at 9:00 a.m.

DATED this 10<sup>th</sup> day of October, 2007.

  
Clayne S. Zollinger Jr.

**CERTIFICATE OF MAILING**

I hereby certify that on this 10<sup>th</sup> day of October, 2007, I served a true and correct copy of the within and foregoing document upon the attorney(s) named below in the manner noted:

*Proctor*  
Cassia County Court  
1459 Overland Ave  
Burley, ID 83318

\_\_\_\_\_ By depositing copies of the same in the United States mail, postage prepaid, at the post office in Rupert, ID.

\_\_\_\_\_ By hand delivering copies of the same to the office of the attorney(s) at the address(es) stated above.

\_\_\_\_\_ By placing copies in the attorney's baskets at the Courthouse in Rupert, Idaho.

\_\_\_\_\_ By telecopying copies of the same to said attorney(s) at the telecopied number(s) (208) 878-1003, and by then mailing copies of the same in the United States Mail, postage prepaid, at the post office in Rupert, Idaho.

Clayne S. Zollinger, Jr.

BY: *Clayne S. Zollinger, Jr.*

Clayne S. Zollinger, Jr. (ISB #4172)

Attorney-at-Law

P.O. Box 210

Rupert, ID 83350

Office: (208) 436-1122

Fax: (208) 436-7837

DISTRICT COURT  
CASSIA COUNTY ID

FILED

2007 OCT 15 A 8:22

LARRY A MICKELSEN

CLERK  
DEPUTY

Attorney for Defendant

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

STATE OF IDAHO,

Plaintiff,

vs.

VALENTINO ALEX HERRERA,

Defendant.

Case No. CR-2006-0003507 D

ORDER OF CONTINUANCE

THIS MATTER, having come before the Court, on counsel for the Defendant's Motion to Continue, in good cause appearing;

IT IS HEREBY ORDERED that the Hearing previously set for the above entitled matter is hereby continued until Thursday, the 1st day of November, 2007 at 8:30 o'clock A.m.

DATED this 12 day of October, 2007.



Judge

**CLERK'S CERTIFICATE OF SERVICE**

I hereby certify that on this 15 day of October, 2007, I served a true and correct copy of the within and foregoing document upon the attorney(s) named below in the manner noted:

Clayne S. Zollinger, Jr.	Blaine Cannon
PO Box 210	PO Box 7
Rupert, ID 83350	Burley, ID 83318

\_\_\_\_\_ By depositing copies of the same in the United States mail, postage prepaid, at the United States Post Office.

\_\_\_\_\_ By hand delivering copies of the same to the office of the attorney(s) at the address(es) stated above.

\_\_\_\_\_ By placing copies in the attorney's baskets at the Courthouse in Rupert, Idaho.

LARRY MICKELSON, Clerk of Court

BY:   
Deputy

CLERK OF COURT  
CASSIA COUNTY ID

FILED \_\_\_\_\_

2007 NOV -1 A 9:10

LARRY A. NICHOLSEN

User: TARA

BY \_\_\_\_\_  
CLERK

Date: 11/1/2007  
Time: 09:01 AM  
Page 1 of 1

**Fifth Judicial District Court - Cassia County**

Minutes Report

Case: CR-2006-0003507

Defendant: Herrera, Valentino Alex

**Selected Items**

Hearing type:	Rule 35 Motion / Motion for Restitution	Minutes date:	11/01/2007
Assigned judge:	John Melanson	Start time:	08:43 AM
Court reporter:	Maureen Newton	End time:	08:43 AM
Minutes clerk:	Tara Gunderson	Audio tape number:	
Prosecutor:	County Prosecutor		
Defense attorney:	Clayne S Zollinger		

Tape Counter: 841	The Defendant is NOT present.
	Clayne Zollinger addresses the Court; argues Rule 35 Motion; cites considerations.
Tape Counter: 842	Clayne Zollinger addresses the Court re: psychological evaluation.
Tape Counter: 843	Clayne Zollinger addresses the Court re: restitution; does not object to the restitution of approx \$150.00 for medical bills; cites considerations.
Tape Counter: 844	Blaine Cannon addresses the Court re: rule 35 motion; cites considerations.
Tape Counter: 848	Blaine Cannon addresses the Court re: restitution
	Blaine Cannon requests \$1425.00 for payment of the psychological evaluation and \$155.94 for medical bills for victim in which the Mini-Cassia Criminal Justice Center paid.
	Blaine Cannon presents documentation re: restitution.
Tape Counter: 851	The Court will sign the order for restitution; cites considerations.
Tape Counter: 851	The Court will take the matter re: Rule 35 Motion Under Advisement; cites considerations.
Tape Counter: 853	Hearing concludes.

**000124**

APR 16 2007 11:01  
GLI047-1

CASSIA CITY AUDITOR  
Check Detail

12088785830

P.2

13:50:37

4/16/0

Posted to Fiscal Year: 2007 Period: 2007-03  
Warrant Number: 2007-0067620  
Date Paid: 3-06-2007  
Check Amount: 1,425.00  
Payee: SMITH-PHD, RICHARD V.

REDEEMED 3-09-2007

Claim#	Description	Amount	Posted To
2235-00007	ACCT 2231.00 PSYCH EVALUATON V HERR * END *	1,425.00	106.602.02.059.0

F3:Next

F4:Prior

F7:Exit

000125

Date: February 27, 2007

**District Court**

Fund #(s) 106-602-02-059-00

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**District Court**

**\$1,425.00**

Customer # or Invoice # and Description of Purchase:

Acct 2231.00

Psych Evaluation

Valentino Herrera

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Department Head or Supervisor Approval



Commissioner Approval

Auditor's Claim Number: 2236-7

Vendor Number: 7680

Pay to order of:

Richard V Smith PhD

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000126



LE OF:

Richard V. Smith PhD  
526 M Shoup Ave West  
Twin Falls, ID 83301  
(208) 734-0447

STATEMENT FOR:

Valentino Herrera  
Cassia CO  
, ID

Date: 02/21/2007  
Acct. No.: 2231.00

Date	Name	Proc. Code	Description	ICD-9 Code	Charges
02/14/2007	Valentin	90801	Evaluation-Legal 3 HRS		480.00
02/16/2007	Valentin	90801	Evaluation-Legal 3 HRS		480.00
02/21/2007	Valentin	96100	Psych Testing- WAIS-R -		25.00
02/21/2007	Valentin	96100	Psych Testing- MMPI -		75.00
02/21/2007	Valentin	96100	Psych Testing - MCMI-III -		75.00
02/21/2007	Valentin	96100	PsychTestPsychopathyCkListR-		50.00
02/21/2007	Valentin	90801	Evaluation-Report 1.5 HRS		240.00

Total Due: 1425.00

000127

1 Kent D. Jensen LSB #4424  
2 2042 Overland  
3 P.O. Box 276  
4 Burley, Idaho 83318  
5 Telephone: 208-878-3366  
6 Fax: 208-878-3368

DISTRICT COURT  
CASSIA COUNTY ID

FILED

2007 JAN 24 P 12:03

LARRY A MICKELSEN

BY  
DEPUTY

7  
8 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
9 OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF CASSIA

10 STATE OF IDAHO,

11 Plaintiff,

12 v.

13 VALENTINO HERRERA,

14 Defendant.

Case No. CR 2006- 3507

ORDER PSYCHOLOGICAL EVALUATION

15 The court being advised in the law and in the premises, and for good cause shown issues  
16 the following order:

17 IT IS HEREBY ORDERED that the Defendant under go a psychological evaluation. It is  
18 further ordered that Dr. Richard Smith of Twin Falls, Idaho, perform said evaluation.

19 IT IS FURTHER ORDERED that the Defendant also be evaluated for drug and alcohol  
20 addiction.

21 IT IS ORDERED that Cassia County pay for said evaluations, as the Defendant is  
22 indigent and incarcerated.

23 DATED this 21<sup>st</sup> day of January, 2007.

24  
25   
Honorable John McElanor

ORDER

000128

24-2007 11:47 AM

DOKA. DISTRICT. COURT

2004 5272

P. 02

JAN-18-2007 THU 01:34 PM DIST OR OF 5TH JUD DIST

FAX NO. 12088781010

P. 02

CERTIFICATE OF MAILING

I hereby certify that on this 24 day of January, 2007, I served the foregoing Order for Psychological Evaluation upon the attorney for Plaintiff by depositing a copy thereof in the following:

Cassia County Prosecutor Attorney      Prosecutor's box in the Cassia County Court (X)  
P.O. Box 7  
Burley, ID 83318

Kent D. Jensen      Kent Jensen's box in the Cassia County Court (X)  
P.O. Box 276  
2042 Overland Ave.  
Burley, ID 83318

  
Clerk

Cassia County Auditor

Dr. Smith.

ORDER

000129



Director  
**DENNIS L. DEXTER**  
and Staff

Business (208) 878-1000 Tele-Fax (208) 878-1100 1415 Albion Avenue Burley, Idaho 83318

### Fax Transmission Sheet

TO: Shantel  
COMPANY: Proc. Attny office  
FAX NUMBER: 878-2924

FROM: Linda  
Mini-Cassia Criminal Justice Center  
FAX NUMBER: 878-1100

NUMBER OF PAGES INCLUDING COVER SHEET 3

**SPECIAL ATTENTION:**

Valentine Herrera -  
Copies of bills (medical) on  
Alan Barrett. All press. etc were  
given at the hospital and included  
on these 2 bills

DATE 4-17-07

TIME 9:10 AM

JAMES F. HIGENS  
Cassia County Sheriff  
129 East 14th St. Burley, ID 83318  
(208) 878-2251

Kevin Halverson  
Minidoka County Sheriff  
P.O. Box 474 Rupert, ID 83350  
(208) 438-8651

000130

NATIONAL MED CTR

0 J1 A-5050 COOP/COMO

A PATIENT CONTROL NO.

30180

REGULAR ER

2254553656

13

B4130-0180

5. PREP. TAX NO. 0122

## STATEMENT OF WORK

7-000000

ENC 2

● G4B

附 录 二

09

67B-4444

942854057

060606

060606

**ON SALE**

4157-1011

MINI CASSIA CRIMIN BIRLEY

TD A3318

ARRETT ALAN

[illegible]

1	091459	11	060606
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GARRETT, ALAN

MINI CASSIA CRIMINAL JUS

BURLEY ID 83318

[illegible]

NI CASSIA CRIMINAL JUST	942854057122	Y	Y	19615
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LINE FACTOR PATH N1			
LINE'S NAME	IF PBL	ED CPT. - BEN - INC. - ID NO	IF GROUP NAME
RETT, ALAN	1	519885919	UNEMPLOYED

EMPLOYMENT AUTHORIZATION CODES	41-50	51-60 EMPLOYER NAME	61-70 EMPLOYER LOCATION
	3	UNEMPLOYED	

[illegible]

000131	OTHER PHYS. ID
	IN PROCESS OF REPRODUCTION X <i>[Signature]</i> IF DATE 061306
1. SOURCE, 1-2-55	I CERTIFY THAT THE INFORMATION CONTAINED HEREIN IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. THE SIGNATURE APPLICANT TO THIS WILL NOT BE MADE A PART HEREOF

ONAL MED CTR.

30180

84130-0180

78-4444

J1 A-5050 COOP/COMO

REGULAR ER

5 PATIENT CONTROL NO.

2254551593

131

1 PRE-TAX NO. 0122

2 STATEMENT CONCERNING PERIOD

7 CONF. D.

8 INCD

9 C/D

10 LAD

11

942854057

060506

060506

3 PATIENT ADDRESS

ARRETT, ALAN

MINI CASSIA CRIMIN BURLEY

ID 83318

IRTHDATE

16 SEX

17 AGE

18 STATE

19 ADDRESS

20 ZIP

21 CITY

22 STATE

23 ZIP

24 MEDICAL RECORD NO.

25 DATE

26 TIME

27 HOURS

28 MINUTES

29 SECONDS

30

0141959

M

M

060506

07

2

07

01

05-09-97

0091459

05

060506

ARRETT, ALAN

MINI CASSIA CRIMINAL JUS

BURLEY ID 83318

IV. CD.	43 DESCRIPTION	44 HCPCS / RATE	45 SERV. DATE	46 SERV. UNITS	47 TOTAL CHARGE	48 NON-COVERED CHARGE	49
50	PHARMACY			3	4817	6970	3343
50	EMERG ROOM	99283	060506	1	21270	5647	5647
81	PRO FEE/ER	99282	060506	1	9410	2530	2530
11	TOTAL			5	35527	11542	

51 PROVIDER NO.	52 PRIOR PAYMENTS	53 EST. AMOUNT DUE
942854057122	Y Y	35527

DUE FROM PATIENT

54 PATIENT NAME	55 P/FIL	56 CERT. - BEN - VIC - ID NO.	57 GROUP NAME	58 INSURANCE GROUP NO.
ARRETT, ALAN	1	519885919	UNEMPLOYED	

59 AUTHORIZATION CODES	60 EMPLOYER NAME	61 EMPLOYER LOCATION
3	UNEMPLOYED	

62 DIAG. CD.	63 ICD-9	64 ICD-10	65 ICD-9-CM	66 ICD-9-CM	67 ICD-9-CM	68 ICD-9-CM	69 ICD-9-CM	70 ICD-9-CM	71 ICD-9-CM	72 ICD-9-CM
759	9181	E9600	E8497							
76	77	78	79	80	81	82	83	84	85	86

87 ATTENDING PHYS. ID	88 PHYS. ID	89 PHYS. ID	90 PHYS. ID	91 PHYS. ID	92 PHYS. ID	93 PHYS. ID	94 PHYS. ID	95 PHYS. ID	96 PHYS. ID	97 PHYS. ID	98 PHYS. ID	99 PHYS. ID
M367												
C26863	HENRIE	DANIEL	M									

000132

9061306

1 **ALFRED E. BARRUS** (ISB #1704)  
Prosecuting Attorney  
2 **BLAINE P. CANNON** (ISB #5575)  
Deputy Prosecuting Attorney  
3 **DOUGLAS G. ABENROTH** (ISB #7181)  
Deputy Prosecuting Attorney  
4 **Cassia County, Idaho**  
1918 Overland Avenue  
Post Office Box 7  
Burley, Idaho 83318  
5 Telephone: 208-878-0419  
Facsimile: 208-878-2924

6 Attorneys for State of Idaho  
06-134

7 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
8 STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA  
9

10 **STATE OF IDAHO,**

Case No. CR-2006-03507\*D

11 Plaintiff,

12 vs.

**ORDER OF RESTITUTION**  
**Pursuant to Idaho Code,**  
**Section 19-5304(2)**

13 **VALENTINO HERRERA,**

14 Defendant.  
\_\_\_\_\_ /

15 This defendant came before the above-entitled Court on the 14<sup>TH</sup> day of May,  
16 2007, for a restitution hearing, and the court determining from the evidence that restitution is  
17 owed in the sum of One Hundred Fifty Five and 94/100s Dollars (\$155.94) to the Mini-Cassia  
18 Criminal Justice Center whose address is: 1415 Albion Avenue, Burley, Idaho, 83318.

19 **NOW, THEREFORE, IT IS HEREBY ORDERED,** pursuant to Idaho Code,  
20 Section 19-5304(2), that the Mini-Cassia Criminal Justice Center has and recover judgment  
21 against the defendant in the sum of (\$155.94) plus interest at the rate of 10.125% per annum, and  
22 that this sum is due and payable during the period of probation. This Order of Restitution is  
23 imposed as part of the Defendant's overall punishment and rehabilitation.

24 **IT IS FURTHER ORDERED** that after forty two (42) days from the entry of this  
25 Order of Restitution, or at the conclusion of a hearing to reconsider an order of restitution,  
26 whichever occurs later, this Order of Restitution may be recorded as a judgment, and the  
27 victim herein may execute as provided by law for civil judgments.  
28

**ORDER OF RESTITUTION -1**

H:\ShanelCounty Criminal\Restitution\Defendants\Order Restitution-Herrera-MCCJC.wpd

**000133**

DATED this 18<sup>th</sup> day of Nov., 2007

  
John Melanson  
District Judge

**CLERK'S CERTIFICATE OF MAILING**

I hereby certify that a true and correct copy of the foregoing Order for Restitution was mailed, postage prepaid, this 1<sup>st</sup> day of Nov., 2007, to the following:

Blaine Cannon  
Deputy Prosecuting Attorney  
P.O. Box 7  
Burley, ID 83318

Kent Jensen  
Attorney at Law  
P.O. Box 276  
Burley, Idaho 83318

*C. Zollinger*

*(certified copy - victim)*  
Mini-Cassia Criminal Justice Center  
1415 Albion Avenue  
Burley, Idaho 83318  
(Medical for Alan Garrett)

*(if applicable)*  
Probation and Parole  
1354 Albion Avenue  
Burley, Idaho 83318

Department of Corrections  
Attention: Shirley / Inmate Accounts Garnishment  
1299 North Orchard Street, Suite 110  
Boise, Idaho 83706  
fax: 208-324-7410

LARRY A. MICKELSEN  
CLERK OF THE DISTRICT COURT

By   
Deputy Clerk

ORDER OF RESTITUTION -2

H:\Shantel\County Criminal\Restitution\Defendants\Order Restitution-Herrera-MCCJC.wpd

000134



1 **ALFRED E. BARRUS** (ISB #1704)  
*Prosecuting Attorney*  
2 **BLAINE P. CANNON** (ISB #5575)  
*Deputy Prosecuting Attorney*  
3 **DOUGLAS G. ABENROTH** (ISB #7181)  
*Deputy Prosecuting Attorney*  
4 **Cassia County, Idaho**  
1918 Overland Avenue  
Post Office Box 7  
Burley, Idaho 83318  
Telephone: 208-878-0419  
5 Facsimile: 208-878-2924

6 Attorneys for State of Idaho  
06-134

7 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
8 STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA  
9

10 **STATE OF IDAHO,**

**Case No. CR-2006-03507\*D**

11 Plaintiff,

12 vs.

**ORDER OF RESTITUTION**  
**Pursuant to Idaho Code,**  
**Section 19-5304(2)**

13 **VALENTINO HERRERA,**

14 Defendant.  
\_\_\_\_\_ /

15 This defendant came before the above-entitled Court on the 14<sup>TH</sup> day of May,  
16 2007, for a restitution hearing, and the court determining from the evidence that restitution is  
17 owed in the sum of One Thousand Four Hundred Twenty Five and 00/100s Dollars (\$1,425.00)  
18 to Cassia County District Court Fund whose address is: 1459 Overland Avenue, Burley, Idaho,  
19 83318.

20 **NOW, THEREFORE, IT IS HEREBY ORDERED**, pursuant to Idaho Code,  
21 Section 19-5304(2), that Cassia County has and recover judgment against the defendant in the  
22 sum of (\$1,425.00) plus interest at the rate of 10.125% per annum, and that this sum is due and  
23 payable during the period of probation. This Order of Restitution is imposed as part of the  
24 Defendant's overall punishment and rehabilitation.

25 **IT IS FURTHER ORDERED** that after forty two (42) days from the entry of this  
26 Order of Restitution, or at the conclusion of a hearing to reconsider an order of restitution,  
27 whichever occurs later, this Order of Restitution may be recorded as a judgment, and the  
28

**ORDER OF RESTITUTION -1**

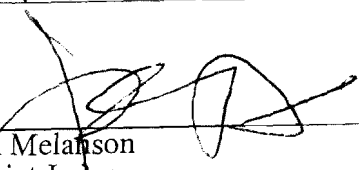
H:\Shantel\County Criminal\Restitution\Defendants\Order Restitution-Herrera-Cassia County.wpd

000135

CLERK OF DISTRICT COURT  
CASSIA COUNTY, IDAHO  
FILED  
2007 NOV -1 A 9:11  
LARRY A. JOHNSON  
CLERK

victim herein may execute as provided by law for civil judgments.

DATED this 1<sup>st</sup> day of Nov., 2007.

  
John Melanson  
District Judge

**CLERK'S CERTIFICATE OF MAILING**

I hereby certify that a true and correct copy of the foregoing Order for Restitution was mailed, postage prepaid, this 1 day of Nov, 2007, to the following:

Blaine Cannon  
Deputy Prosecuting Attorney  
P.O. Box 7  
Burley, ID 83318

Kent Vensen  
Attorney at Law  
P.O. Box 276  
Burley, Idaho 83318



*(certified copy - victim)*  
Cassia County  
Attention: Auditor  
(District court Fund 106)  
1459 Overland Avenue  
Burley, Idaho 83318

*(if applicable)*  
Probation and Parole  
1354 Albion Avenue  
Burley, Idaho 83318

Department of Corrections  
Attention: Shirley / Inmate Accounts Garnishment  
1299 North Orchard Street, Suite 110  
Boise, Idaho 83706  
fax: 208-324-7410

LARRY A. MICKELSEN  
CLERK OF THE DISTRICT COURT

By   
Deputy Clerk

ORDER OF RESTITUTION -2

H:\Shantel\County Criminal\Restitution\Defendants\Order Restitution-Herrera-Cassia County.wpd

000136

ORIGINAL

DISTRICT COURT  
CASSIA COUNTY ID

Inmate name Valentino Herrera  
IDOC No. 18269  
Address PO Box 51, E 114  
Boise Idaho 83707

FILED  
2007-11-03  
A 10:47  
JAN NICKELSEN

Defendant/Appellant

IN THE DISTRICT COURT OF THE Fifth JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

Valentino Herrera, )

Appellant, )

vs. )

State of Idaho, )

Respondent. )

Case No. Cr-2006-03507 \*D

NOTICE OF APPEAL

TO: THE ABOVE RESPONDENTS, State of Idaho,  
AND THE PARTY'S ATTORNEYS, \_\_\_\_\_  
AND THE CLERK OF THE ABOVE ENTITLED  
COURT: \_\_\_\_\_

NOTICE IS HEREBY GIVEN THAT

1. The above named Appellant(s) Valentino Herrera  
appeal(s) against the above named respondent(s) to the Idaho Supreme Court from (the final  
judgment or order, (describe it) Order of Restitution, case  
No Cr-2006-03507 \*D

entered in the above-entitled action (proceeding) on the 1st day of November,

2007, Honorable Judge Melanson presiding.

NOTICE OF APPEAL - 1

Revised: 10/14/05

000137

2. That the party has a right to appeal to the Idaho Supreme Court, and the judgment or orders described in paragraph 1 above are appealable orders under and pursuant to Rule \_\_\_\_\_ [e.g. (11(c)(1)), or (12(a))]] I.A.R.

3. A preliminary statement of the issues on appeal which the appellant then intends to assert in the appeal; provided, any such list of issues on appeal shall not prevent the appellant from asserting other issues on appeal.

A) Pursuant to I.C. 19-5304 sub 10, Appellant requests relief from the restitution order case CR-2006-03507 \*D for grounds set forth;

1) Appellant disputes the amount of \$1,425<sup>00</sup> for public defender fees since defendant was indigent at the time of his case and court appointed representation at payparis.

Attached in this notice of appeal

4.(a) Is a reporter's transcript requested? \_\_\_\_\_

(b) The appellant requests the preparation of the following portions of the reporter's transcript:

Idaho Appellate court system  
and to date has not been  
ruled on. Appellant raises  
the argument that said order  
of restitution is part of his  
conviction being appealed and  
moves this Honorable court for  
an order setting aside his  
order for restitution.

is a letter from appointed counsel, Clayne Zollinger, Jr. indicating for this defendant to disregard service fees.

2) Appellant disputes the amount of \$155.94 restitution in case No. CR-2006-03507 \*D as this case is a civil proceeding which this defendant has not been procedurally sued.

3) Prior to this Appellants right to appeal process, funds in the amount of \$14.00 were prematurely deducted from his funds toward his restitution order. Appellants requests that these funds be rescinded to his inmate account.

4) Appellants judgment of conviction case No CR-2006-03507 \*D is currently being appealed in the

Notice of Appeal-4

000140

**COPY**

**Clayne S. Zollinger, Jr.**

*Attorney-at-Law*  
818 S. Oneida, Suite 1  
P.O. Box 210  
Rupert, Idaho 83350  
Office (208) 436-1122  
Fax: (208) 436-7837

---

---

July 2, 2007

Valentino Herrera #18269  
Unit A-32  
PO Box 51  
Boise, ID 83707

Dear Valentino:

I have received your letter dated June 27, 2007. Apparently, there is some confusion, and I apologize if you received a bill for my services.


Mr. Jensen asked to withdraw from the case, and the Court allowed him to withdraw. I have been appointed to represent you in further proceedings. This is at county expense, and you are not expected to pay any portion of my costs.

I have been appointed to represent you on a Rule 35. I have not received the entire file, and have no information as to what basis you are claiming in the Rule 35. I would appreciate it if you could write me and let me know your position.

I understand your being short of funds, therefore, I enclose a self addressed stamped envelope so you may respond more quickly.

I will be waiting to hear from you.

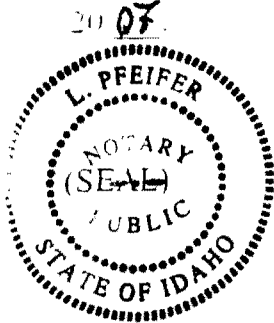
Sincerely,

  
Clayne S. Zollinger, Jr.  
CSZ/js

*Notice of Appeal-5*

**000141**

SUBSCRIBED AND SWORN to before me this 27<sup>th</sup> day of November



[Signature]  
Notary Public for Idaho  
Commission expires: 05/11/2012

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, I

mailed a true and correct copy of the NOTICE OF APPEAL via the U.S. mail system to:

Clerk of the Court  
Cassia County  
1918 Overland Avenue  
Burley, Idaho 83318

[Signature]  
Appellant - Pro Se

11-27-07



ORIGINAL

AFFIDAVIT OF FACTS IN SUPPORT OF [REDACTED]

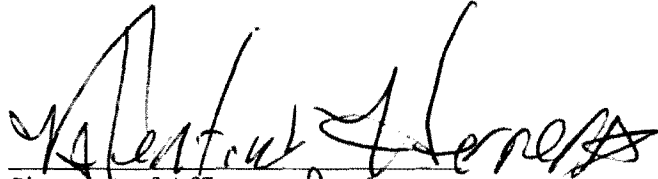
STATE OF IDAHO )  
COUNTY OF ADA ) ss

Valentino Herrera, being first duly sworn on oath, deposes and says:

1. I am the Appellant in the above -  
entitled Notice of Appeal proceeding,  
Case No. CR-2006-03507.
2. I make this Affidavit in support of  
a motion pursuant to I.C. 19-5304  
Sub (10) in appeal to the order of  
restitution in case CR-2006-03507.
3. I am currently incarcerated at the  
Idaho Maximum Security Institution under  
judgment and conviction of case  
CR-2006-03507 out of Cassia County
4. The order for restitution in which  
I am appealing, is part of my  
judgment of conviction which is currently  
under appeal in the Idaho Appellate Court.

Wherefore, Appellant respectfully prays for an order  
suspending the court ordered restitution and that all  
fees taken thus far be rescind to this Appellant.

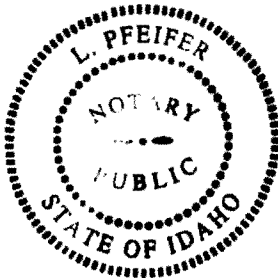
Further your affiant sayeth not.


  
Signature of Affiant - Pro Se

11-27-07

SUBSCRIBED AND SWORN AND AFFIRMED TO before me this 27<sup>th</sup> day of

November, 2007.



  
Notary Public for Idaho  
My Commission Expires: 08/11/2012

Clayne S. Zollinger, Jr. (ISB #4172)

Attorney-at-Law

P.O. Box 210

Rupert, ID 83350

Office: (208) 436-1122

Fax: (208) 436-7837

Attorney for: Plaintiff

2007 Dec. 13

NCN

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA**

VALENTINO HERRERA,

Plaintiff/Appellant,

vs.

STATE OF IDAHO,

Defendant/Respondent

Case No. CV-2006-3507

**MOTION FOR APPOINTMENT OF  
STATE APPELLATE PUBLIC  
DEFENDER**

COMES NOW Clayne S. Zollinger, Jr., attorney for the Plaintiff, and moves the Court for an Order appointing the Idaho State Appellate Public Defender's Office to represent the Plaintiff, Valentino Herrera, in all matter relating to Plaintiff's appeal to the Idaho Supreme Court, a Notice of Appeal having been filed with the District Court November 30, 2007 and with the Supreme Court December 03, 2007.

DATED this 11<sup>th</sup> day of December, 2007.

  
Clayne S. Zollinger, Jr.  
Attorney for the Defendant

**CERTIFICATE OF MAILING**

I hereby certify that on this 11<sup>th</sup> day of December, 2007, I served a true and correct copy of the within and foregoing document upon the attorney(s) or person(s) named below in the manner noted:

State Appellate Public Defender  
PO Box 83720  
Boise, ID 83720-0005

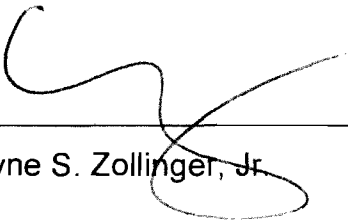
Deputy Prosecuting Attorney  
PO Box 7  
Burley, ID 83318

Lawrence G. Wasden  
Idaho Attorney General  
PO Box 83720  
Boise, ID 83720-0010

  X   By depositing copies of the same in the United States mail, postage prepaid, at the post office in Rupert, Idaho.

       By hand delivering copies of the same to the office of the attorney(s) at the address stated above.

       By telecopying copies of the same to said attorney(s) at the telecopied number(s) \_\_\_\_\_, and by then mailing copies of the same in the United States Mail, postage prepaid, at the post office in Rupert, Idaho.

  
\_\_\_\_\_  
Clayne S. Zollinger, Jr.

Claynie S. Zollinger, Jr. (ISB #4172)

Attorney-at-Law

558 S. Oneida, Suite 1

P.O. Box 210

Rupert, ID 83350

Office: (208) 436-1122

Fax: (208) 436-7837

Attorney for: Plaintiff

CASSIA COUNTY  
CLERK OF DISTRICT COURT  
IDAHO

2007 DEC 14  
2007 DEC 14 AM 10 18

NCN

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

VALENTINO HERRERA

Case No. CV2006-3507

Plaintiff/Appellant,

vs.

ORDER FOR APPOINTMENT  
OF STATE APPELLATE PUBLIC  
DEFENDER

STATE OF IDAHO,

Defendant/Respondent

THIS MATTER, having come before the Court on the Defendant's Motion,  
in good cause appearing;

IT IS HEREBY ORDERED, in accordance with Idaho Code §19-870, that the  
State Appellate Public Defender is appointed to represent the Plaintiff in all matters  
as indicated herein, or until relieved by this Court's order.

DATED this 13<sup>th</sup> day of December, 2007.

  
Judge JOHN M. MELANSON

CLERK'S CERTIFICATE OF MAILING

I hereby certify that on this 14th day of December, 2007, I served a true and correct copy of the within and foregoing document upon the attorney(s) named below in the manner noted:

Clayne S. Zollinger, Jr.  
P.O. Box 1  
Rupert, ID 83350

Prosecutor's Office  
P O Box 7  
Burley, ID 83318

☒ By depositing copies of the same in the United States mail, postage prepaid, at the United States post office.

☐ By hand delivering copies of the same to the office of the attorney(s) at the address(es) stated above.

☒ By placing copies in the attorney's baskets at the Courthouse in Rupert, Idaho

LARRY MICKELSON, CLERK OF COURT

BY: Cheri C. Nevers  
Deputy Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

State of Idaho	)	
	)	
Plaintiff/Respondent,	)	District Court No. CR-2006-3507*D
	)	
Vs.	)	
	)	Supreme Court No. 34818
Valentino Herrera,	)	
	)	
Defendant/Appellant,	)	<b>CLERK'S CERTIFICATE</b>
	)	
	)	

I, Larry A Mickelsen, Clerk of the District Court, of the Fifth Judicial District of the State of Idaho, in and for the County of Cassia, do hereby certify that the foregoing documents in the above-entitled cause were compiled under my direction and are true and correct copies of the pleadings, documents and papers designated to be included under Rule 28, Notice of Appeal and the entire reporter's transcript of the Sentencing Hearing.

I do further certify that all exhibits offered or admitted in the above-entitled cause and confidential exhibits will be lodged with the Clerk of the Supreme Court.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of said Court on the 28 day of January, 2008.

LARRY A MICKELSEN  
CLERK OF THE DISTRICT COURT

By Amy Kramer  
Amy Kramer, Deputy Clerk

CLERK'S CERTIFICATE

**IN THE SUPREME COURT  
OF THE STATE OF IDAHO**

State of Idaho,	)	
	)	
Plaintiff/Respondent,	)	District Court No. CR-2006-3507*D
	)	
Vs.	)	
	)	Supreme Court No. 34818
Valentino Herrera,	)	
	)	
Defendant/Appellant,	)	<b>CERTIFICATE OF EXHIBITS</b>
	)	
	)	

I, Larry A Mickelsen, Clerk of the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Cassia, do hereby certify that no exhibits were offered or admitted for this appeal but were filed in docket no. 34193.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of Said Court on the 28 day of January, 2008.

LARRY A MICKELSEN  
CLERK OF THE DISTRICT COURT

By: Amy Kramer  
Amy Kramer, Deputy Clerk

CERTIFICATE OF EXHIBITS



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

State of Idaho	)	
	)	
Plaintiff/Respondent,	)	District Court No. CR-2006-3507*D
	)	
Vs.	)	
	)	Supreme Court No. 34818
Valentino Herrera	)	
	)	
Defendant/Appellant,	)	<b>CERTIFICATE OF SERVICE</b>
	)	
	)	

I, Amy Kramer, Deputy Clerk of the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Cassia, do hereby certify that I have personally served or mailed, by X United States mail, \_\_\_ hand delivery, one copy of the Clerk's Record and Court Reporter's Transcript to the following Attorney's in this cause as follows:

Lawrence Wasden  
Attention: Appellate Unit  
700 West Jefferson Street  
Boise Idaho 83720-0010

Molly Huskey  
State Appellate Public Defender  
3647 Lake Harbor Lane  
Boise Idaho 83703

IN WITNESS WHEREOF, I have hereunto set my hand the affixed seal of the said Court  
this 28 day of January, 2008.

LARRY A MICKELSEN, Clerk of the Court

By Amy Kramer  
Amy Kramer, Deputy Clerk

CERTIFICATE OF SERVICE